109-654

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1883.

No. 892.

A. U. WYMAN, TREASURER OF THE UNITED STATES, PLAINTIFF IN ERROR,

vs.

THE UNITED STATES EX REL. EMINEL P. HALSTEAD, ADMINISTRATOR OF THE ESTATES OF JOHN N. PULLIAM AND JOHN J. PULLIAM, AND AS TRUSTEE BY ORDER OF COURT.

IN ERROR TO THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

FILED JULY 6, 1883.

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1 In the supreme court of the District of Columbia.

THE UNITED STATES EX REL. EMINEL P. HALSTEAD, ADM'R, &C.,
vs.
A. U. WYMAN, TREASURER, &C.
No. 24413.

Petition for mandamus.

To the honorable the justice of the supreme court of the District of Columbia:

Your petitioner, Eminel P. Halstead, respectfully shows that he is a citizen of the District of Columbia and presents this petition as administrator of the estate of John N. Pulliam and of John J. Pulliam, and trustee appointed by said court.

That defendant is Treasurer of the United States, residing and transacting the duties of said office in said District, and as such officer is made defendant hereto.

2 That on the 17th day of June, 1882, the Treasurer of the United States, under and by virtue of an act of *of* Congress approved May 1st, 1882, making appropriation therefor issued three drafts payable at the Treasury at Washington, as follows: draft No. 19924, to John J. Pulliam, executor of John N. Pulliam, for $3,020; draft No. 19925 to John J. Pulliam, for $1,223, and draft No. 19926 to John J. Pulliam for $545, which drafts were delivered to petitioner for and on account of the prayers thereof.

That said Pulliam having become deceased, and petitioner having said drafts in his possession as aforesaid, applied for and obtained letters of administration upon the several estates of John N. Pulliam and of John J. Pulliam from the supreme court of the District of Columbia, which letters bear date on the 2nd day of August, 1882, as will more fully appear by reference to said letters of administration and the records of said court, to which reference is made.

3 5. That in the month of September, 1882, Benjamin U. Keyser, receiver, filed his bill on the equity side of said , No. 8273, against petitioner and others, claiming an equitable interest in said drafts or the proceeds thereof, and such proceedings were had in said suit, that on the day of March, 1883, a decree was rendered by said court in said cause directing petitioner, as administrator aforesaid, and as trustee for that purpose, to endorse and collect said drafts and make distribution of the proceeds thereof in manner as directed, all of which will more fully appear by reference to the pleadings, proceedings, and decree filed and rendered in said cause, to which reference is made for greater certainty.

6. That in obedience to said decree petitioner endorsed said drafts as directed on the 19th day of April, 1883, and demanded payment thereof from defendant, who then was and still is Treasurer of the United States,

4 which payment was refused and still is refused, although defendant then had and still has sufficient money in his possession and control to satisfy and pay the amount of such drafts, the same hav-

ing been appropriated specially for that purpose by the act of Congress aforesaid.

Wherefore and inasmuch as petitioner has no plain, speedy, or adequate relief in the cause of law, he prays this honorable court to prevent the writ of mandamus directed to said defendant requiring him to pay petitioner the amount of said drafts, and for such other or further order as to said court shall seem meet and proper in the premises.

EMINEL P. HALSTEAD.

J. WALTER COOKSAY and
A. L. MERRIMAN, *Att'y'*.

DISTRICT OF COLUMBIA, *ss:*

Eminel P. Halstead, being duly sworn, says that the foregoing petition by him subscribed is true, except as to matters stated on information and belief, and as to those matters he believes it to be true.

EMINEL P. HALSTEAD.

5 Subscribed and sworn to before me this 19' day of April, 1883.

A. S. TAYLOR,
Notary Public.

6 Suprem' court, D. C. In general term.

THE UNITED STATES UPON THE RELATION OF Eminel P. Halstead, administrator of the estates of John N. Pulliam and John J. Pulliam, and as trustee under the order of court, *vs.* A. U. WYMAN, TREASURER OF THE UNITED States.	No. 24413. At law.

On reading the petition praying for the writ of mandamus filed in the above cause, and upon consideration of the same, it is this 23rd day of April, 1883, ordered that the defendant show cause on the 30th day of April, instant, before this court in general term, why the said writ of mandamus shall not issue as prayed for; and that a copy of this order be served on the defendant as soon as practicable.

By this court:

D. K. CARTTER,
Chief Justice.

7 Served copy of rule to show cause on A. U. Wyman April 24th, 1883.

CLAYTON McMICHAEL,
U. S. Marshal.

8 Supr m' court of the District of Columbia. In general term.

THE UNITED STATES ON THE RELATION OF Eminel P. Halstead, administrator of the estates of John N. Pulliam and John J. Pulliam and as trustee by order of court, *vs.* A. U. WYMAN, TREASURER OF THE UNITED States.	At law. No. 24413.

2. The answer of A. U. Wyman, Treasurer of the United States, to the rule laid upon him by this court to show cause why the writ of mandamus should not issue against him as prayed in the petition filed in the case above entitled.

9 This respondent, answering, saith that—

1. True it is, as stated in the said petition, that respondent is the Treasurer of the United States; that on the 17th day of June, 1882, the Treasurer of the United States issued the three drafts particularly set forth in paragraph 3 of the said petition; that the said petitioner sued out letters of administration to the estates of John J. Pulliam and John N. Pulliam, deceased, respectively, from this court; that Benjamin U. Keyser, receiver, &c., filed the bill mentioned in paragraph 5 of said petition; that it was thereunder decreed that the said petitioner, as administrator and trustee as aforesaid, should endorse and collect the said drafts and make distribution of the proceeds thereof in a way prescribed by the said decree; that the said petitioner did endorse the said drafts and demand
10 payment thereof from this respondent; that this respondent did refuse to pay the said drafts, and that there is money in the Treasury of the United States appropriated by Congress for the payment of the said drafts.

And this respondent, further answering, saith that neither the United States, whose Treasurer he is, nor himself, as said Treasurer, is in any way a party to the decree mentioned in the said petition or in any way bound or affected thereby, and that if this respondent doth owe any duty to the said petitioner in the premises, which he protests he doth not, it is not by virtue of the said decree.

3. And this respondent, further answering, saith that he hath always been ready and willing to pay the said drafts to any person or persons duly authorized to endorse and receive payment thereof, but that the said petitioner, in his several qualities of administrator, as this respond-
11 ent is advised, is not authorized to endorse and receive payment of the said drafts, because (1) the said several letters of administration were improvidedly issued, the domicils of the said decedents, John J. Pulliam and John N. Pulliam, respectively, being in the State of Tennessee at the time of their death, and there being no assets or effects whatsoever of the said decedents in the District of Columbia, when the said letters of administration were issued, this court had no jurisdiction to issue the same, and that as a consequence the said letters are null and void; and (2) because if the said letters of administration are valid, they do not empower the said administrator to deal with the assets of the said decedents, which are without the said District of Columbia, and that the debts repre-

sented by the said drafts have no situs or locality within the said District, but that the situs and locality of the said debts are within the said
12 State of Tennessee, where were the domicils of the said decedents at the time of their death; and that the legal title to the said debts hath by operation of law devolved from the said decedents to their respective administrators appointed in the said State of Tennessee; that the administrators last mentioned are in no sort privy to or bound or affected by the said decree, and that no proceeding hath been had to divest the title of the said domiciliary administrators to the said drafts.

4. And this respondent, further answering, saith that the First Comptroller of the Treasury, who is required by law to settle the accounts of this respondent, hath given this respondent to understand that he will not be allowed credit by the amounts of the said drafts unless the same are endorsed by the administrators of the said decedents appointed in
13 the said State of Tennessee, as will more fully appear by the letter of the said Comptroller to this respondent herewith filed and exhibited, and marked "Respondent's Exhibit A. U. W."

5. And this respondent, further answering, saith that he is advised that the said Benjamin U. Keyser, the complainant in the bill aforesaid, pretends to have derived title to some part of the claims represented by the said drafts by and through an assignment thereof, which assignment is illegal and void, as this respondent is advised.

And now this respondent having answered all and singular the matters and things set forth in the said petition, prays to be hence dismissed with his proper costs in this behalf sustained.

A. U. WYMAN, *Treasurer.*

14 DISTRICT OF COLUMBIA,
City of Washington, to wit:

Personally appeared before me, the undersigned, a notary public in and for the District and city aforesaid, A. U. Wyman, who made oath in due form of law that the matters and things stated in the answer aforegoing are, in so far as stated of his own knowledge, true as stated, and in so far as stated on the information of others that he believes them to be true.

Given under my hand and seal this eighth day of May, in the year **1883.**

JAS. M. EWING,
Notary Public.

15 TREASURY DEPARTMENT,
FIRST COMPTROLLER'S OFFICE,
Washington, D. C., Apr. 18, 1883.

Hon. A. U. WAMAN,
Treasurer of the United States:

SIR: In June, 1882, the Treasurer of the United States issued three several drafts on a Treasury warrant, which drafts were No. 19924, for $3,020, to the order of John J. Pulliam, as executor of John N. Pulliam, No. 19925, for $1,223, and No. 19926, for $545, to the order of John J. Pulliam.

I am advised that both these parties are dead. An administrator on

the estate of each of these deceased parties, as I am advised, was appointed in this District, and Benjamin U. Keyser, as receiver of the German-American National Bank, commenced a proceeding in the supreme court of the District of Columbia, under which it was decreed that he should indorse these drafts, collect the money, retain a portion of it, and pay the residue in court.

16 A copy of the decree and the original papers in the case were submitted to me for my opinion, by attorneys representing Mr. Keyser, and I have considered it with great care. I am compelled to hold that these drafts cannot be paid except on the indorsement of the proper administrators appointed or to be appointed in the State of Tennessee, where the payees in the draft resided at the time of their death.

You cannot be allowed credit in the settlement of your accounts for these drafts except upon the indorsement of such legal representatives duly appointed in Tennessee. An indorsement by Mr. Keyser, as receiver, cannot be received as evidence of legal payment in the settlement of your accounts.

Very respectfully,

WM. LAWRENCE,
Comptroller.

17 Supreme court of the District of Columbia, sitting in general term, May 14, 1883.

THE UNITED STATES UPON THE RELATION OF Eminel P. Halstead, administrator of the estate of John N. Pulliam and John J. Pulliam, and as trustee under the order of court, *vs.* A. U. WYMAN, TREASURER OF THE UNITED States.	At law. No. 24413.

Argued by Mr. Cooksey and Mr. Merriman for the relator, and Mr. Maury, Assistant Attorney-General, for the United States. Submitted.

18 Suprem' court of the District of Columbia, sitting in general term, May 28, 1883.

THE UNITED STATES UPON THE RELATION OF Eminel P. Halstead, administrator of the estate of John N. Pulliam and John J. Pulliam, and as trustee under the order of court, *vs.* A. U. WYMAN, TREASURER OF THE UNITED States.	At law. No. 24413.

Now come here as well the United States upon the relation aforesaid, as the defendant, A. U. Wyman, Treasurer of the said United States, represented by the assistant attorney-general.

Whereupon, because it appears to the court here that the relator is lawfully entitled to the money mentioned in relator's petition and in the cause shown by the defendant, and that the said cause shown is not suffi-

cient to preclude the relator from having and receiving the moneys
19 in the relator's petition mentioned and claimed by him, as administrator of the estates of John N. Pulliam and John J. Pullaim, and as trustee under the order of court mentioned in the pleadings:

Therefore, it is considered that the said relator have against the said Treasurer of the United States a perem'tory writ of mandamus, commanding him to pay to the relator, as administrator and trustee aforesaid, upon the draft in the pleadings mentioned, the moneys therein specified.

20 THE UNITED STATES OF AMERICA, *ss:*

The President of the United States to the chief justice and justices of the supreme court of the District of Columbia, greeting:

Because in the record and proceedings as also in the rendition of the judgment of a plea, which is in the said court before you between The United States ex rel. Eminel P. Halstead, administrator of the estates of John N. Pulliam and John J. Pulliam, & as trustee, by order of court, vs. A. U. Wyman, Treasurer of the United States, being No. 24413 at law, a manifest error hath happened, to the great damage of the said defendant, as by his complaint appears, and it being fit that the error, if any hath happened, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf: Therefore, you are hereby commanded, if judgment be therein given, under your seal, distinctly and openly to send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected the said Supreme Court may cause further to be done therein to correct that error what of right and according to the law and custom of the United States should be done.

Witness the honorable Morrison R. Waite, Chief Justice of the United States, this 2d day of June, in the year of our Lord 1883, and of the Independence of the United States the one hundred and seventh.

R. J. MEIGS, *Clerk.*
By J. R. YOUNG, *Ass't Clerk.*

DISTRICT OF COLUMBIA, *to wit:*

To Eminel P. Halstead:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the supreme court of the District of Columbia, wherein A. U. Wyman, Treasurer of the U. S., is plaintiff and you are defendant, to show cause, if any there be, why the judgment in the said writ mentioned should not be corrected, so that speedy justice be done the parties in that behalf.

Witness D. K. Cartter, chief justice of the said supreme court of the District of Columbia.

D. K. CARTTER,
Ch'f Just.

Service acknowledged July 3, 1883.

J. WALTER. COOKSEY,
Att'y for Relator.

21 The Secretary of the Treasury having directed the respondent to sue out a writ of error no security is necessary in order to make this writ a supersedeas.

D. K. CARTTER,
Chief Justice.

(Indorsed:) At law No. 24413. United States ex rel. Eminel P. Halstead, adm'r, vs. A. U. Wyman, Treasurer. Writ of error.

22 *Authentication of record.—Clerk's certificate.*

Clerk's office, supreme court of the District of Columbia:

I, R. J. Meigs, clerk of the said court, do hereby certify that the writings annexed to this certificate are true copies of originals on file and of record in said office, and that said originals together constitute the record of the proceedings of said court in this cause.

Witness my hand and the seal of said court this 5th day of July, 1883.

[SEAL.] R. J. MEIGS, *Clerk*,
By R. J. MEIGS, No. 3, *Assistant Clerk.*

Justice's certificate.

I, David K. Cartter, chief justice of said court, do certify the foregoing attestation by R. J. Meigs, clerk of the said court, to be in due form.

Witness my hand and seal this 5th day of July, 1883.

D. K. CARTTER, [SEAL.]
Chief Justice.

Clerk's certificate to justice's official character.

I, R. J. Meigs, clerk of said court, hereby certify that David K. Cartter, whose genuine signature is subscribed to the foregoing certificate, was, at the time of signing and attesting the same, chief justice of said court, duly commissioned and qualified.

Witness my hand and the seal of said court this 5th day of July, 1883.

[SEAL.] R. J. MEIGS, *Clerk*,
By R. J. MEIGS, No. 3, *Assistant Clerk.*

(Indorsement on cover:) No. 892. A. U. Wyman, Treasurer of the United States, plaintiff in error, vs. The United States ex. rel. Eminel P. Halstead, administrator of the estates of John N. Pulliam and John J. Pulliam, and as trustee under order of court. Dist. of Columbia supreme court. Filed 6th July, 1883.

109-654

In the Supreme Court of the United States.

OCTOBER TERM, 1883.

A. U. WYMAN, TREASURER OF THE UNITED States, plaintiff in error,
vs.
THE UNITED STATES, EX RELATIONE EMINEL P. Halstead, administrator, &c.
No. 892.

BRIEF FOR THE PLAINTIFF IN ERROR.

In the Supreme Court of the United States.

OCTOBER TERM, 1883.

A. U. WYMAN, TREASURER OF THE UNITED States, plaintiff in error,
vs.
THE UNITED STATES, EX RELATIONE EMINEL P. Halstead, administrator, &c.
} No. 892.

BRIEF FOR THE PLAINTIFF IN ERROR.

This is an application for a *mandamus* to compel the Treasurer of the United States to pay the relator the amounts of certain drafts which he claims to hold and own as administrator of certain parties hereinafter mentioned.

THE PETITION (R., pp. 1, 2.)

It avers that under the act of Congress of 1st May, 1882, the said Treasurer issued three drafts, payable at the Treasury at Washington; that is to say, draft No. 19924, for $3,020, to John J. Pulliam, executor of John N. Pulliam, deceased; draft No. 19925, for $1,223, to John J. Pulliam; and draft No. 19926, for $545, to John J. Pull-

iam, and that said drafts were delivered to the relator for and on account of the payees thereof.

That said Pulliam having died, relator sued out letters of administration from the supreme court of this District on the estates of John J. and John N. Pulliam on 2d August, 1882.

That in September, 1882, Benjamin U. Keyser, receiver, filed a bill in the supreme court of this District against relator and others, claiming an equitable interest in said drafts, and that in March, 1883, it was decreed that relator, as administrator and as trustee for that purpose, should indorse and collect said drafts and make distribution of the proceeds as directed.

That in obedience to said decree, relator indorsed said drafts as directed, on the 19th April, 1883, and demanded payment thereof from defendant, who then was and still is the Treasurer of the United States, but that defendant, although in possession of the money wherewith to pay said drafts, hath refused to pay the same.

THE ANSWER (R., pp. 283.)

It admits all the allegations of fact in the petition.

It denies that respondent is in any way bound or affected by the said decree in chancery, as neither the United States nor himself is a party to said decree.

It avers that respondent hath been and still is ready to pay said drafts to any person or persons authorized to indorse and receive payment, but that respondent is advised that the relator, in his several qualities of administrator, is not authorized in those behalves; for that the said letters of administration were improvidently issued

to him, the domicil of the deceased Pulliams at the time of their death being the State of Tennessee, and, there being no assets in this District when the said letters were issued, the court had no jurisdiction in the premises; and for that, if the said letters are valid they do not empower the said administrator to deal with assets of the said decedents which are without this District; and that the debts represented by the said drafts have no *situs* within the District, but have their *situs* in Tennessee; that the legal title of said drafts hath devolved upon the administrators of the said decedents appointed in Tennessee, and that no proceeding hath been had to divest the title of the said domiciliary administrators; that the First Comptroller of the Treasury hath given respondent notice that his respondent's account will not be credited by said drafts unless the same are indorsed by the administrators appointed in Tennessee; that said Benjamin U. Keyser, complainant in the bill aforesaid, claims title to some part of the claims represented by the said drafts, under and by virtue of an assignment, which, however, is illegal and void, as respondent is advised.

JUDGMENT.

The court being of opinion that a peremptory *mandamus* should go, accordingly so adjudged. (R., pp. 5 and 6.)

ERROR ASSIGNED.

The said judgment is erroneous in this, that the record presents no case for the writ of *mandamus*.

ARGUMENT.

This judgment is drawn into question because the principle on which it proceeds is believed to be unsound, and,

if established, certain to produce serious public inconvenience.

The doctrine underlying this judgment, that all debts due by the United States and payable at the Treasury here are *bona notabilia* in this District, and, where the creditor hath died, not to be withdrawn therefrom until first administered to here is well calculated to startle the legal intelligence of the country.

Indeed, this doctrine, when closely scrutinized, has some tendency to depreciate the public funds and discourage transactions generally with the Government, for if a person not residing in this District die before receiving money at his credit in the Treasury here, such money, according to the law laid down by the court below, may be intercepted at the option of any creditor of the decedent living here and subjected to the burden of an administration here as well as at the decedent's domicil. Surely it must be a false principle of administrative government that conducts to such results.

We doubt whether there is a government anywhere within civilization that allows the necessity of having a seat for its operations to interfere with the full enforcement of the principle of its ubiquity, a principle whose complete observance is of special importance in the transactions of a government that exercises jurisdiction over so immense a tract of territory as the Government of the United States.

As a consequence of this doctrine of the omnipresence of Government, all transactions between the Government and its citizens are treated as having been carried forward at the respective domicils of the latter. If the Government owe the citizen money it owes it at his domicil, and *nowhere*

else; and, albeit payment be made here, it is, in legal intendment, made at the creditor's domicil. To deny the principle as thus stated is either to repudiate the doctrine of ubiquity or, what is quite as bad, to turn it into an engine of oppression by holding that what the Government owes *anywhere* it owes *everywhere*, thus localizing every debt on every foot of the national territory. Indeed, the court below seems to regard the latter of these alternatives as the sense in which we take the principle of the ubiquity of Government, whereas our contention has always been that, whenever Government owes money it is to be regarded as owing it at the domicil of the creditor, *and nowhere else; ubiquity*, as thus used, meaning simply that Government holds this relation to every one of its creditors all through the land.

A priori, the judgment in this case would have been regarded impossible at any time since the judgment of this court in Vaughan *vs.* Northup (15 Peters, 1), which is virtually nullified by the decision in this case.

The case of Vaughan *vs.* Northup was this: One Moody, an inhabitant of Kentucky, died there in 1802, intestate and childless. In 1833 one Northup qualified as his administrator in the proper court in Kentucky; and, afterwards, as such administrator, received from the United States Treasury a considerable sum of money due his intestate for military services in the Revolutionary war. A bill was filed against him in this District by parties claiming to be the next of kin and distributees. The bill was dismissed, and on the appeal to this court it was said by Story, *J.*, who was the organ of the court, that the bill would not lie because the administrator could not be sued out of the jurisdiction from which he derived his authority.

In answer to the suggestion that the present case was distinguishable because the assets in question *were not collected in Kentucky, but at Washington, and "so constituted local assets within this District,"* the learned judge said:

> We cannot yield our assent to the correctness of this argument. The debts due from the Government of the United States have no locality at the seat of Government. The United States in their sovereign capacity have no particular place of domicile, but possess in contemplation of law an ubiquity throughout the Union; and the debts due by them are not to be treated like the debts of a private debtor, which constitute local assets in his own domicile. On the contrary, the administrator of a creditor of the Government duly appointed in the State where he was domiciled at his death has full authority to receive payment and give a full discharge of the debt due to his intestate in any place where the Government may choose to pay it, whether it be at the seat of the Government or at any other place where the public funds are deposited. If any other doctrine were to be recognized the consequence would be that before the personal representative of any deceased creditor belonging to any State in the Union would be entitled to receive payment of any debt due by the Government, he would be compelled to take out letters of administration in this District for the due administration of such assets. Such doctrine has never yet been sanctioned by any practice of the Government and would be full of public as well as private inconvenience. It has not, in our judgment, any just foundation in the principles of law.

Vaughan *vs.* Northup was decided in 1841. In 1855 this court distinctly reaffirmed the doctrine of that case as to the ubiquity of Government in Mackey *vs.* Coxe (18 How., 105), quoting, with approval, the very language we have quoted.

Now, how does the learned court below avoid the force of these authoritative decisions? By the extraordinary assumption that what is thus laid down as a broad prin-

ciple of public law *applicable to every part of the country* and without the slightest reference to legislation of any kind, is really nothing more than the enunciation of the court's sense of an act of Congress *operating exclusively within the District of Columbia*, which being now repealed, there is no longer any support for the doctrine laid down in Vaughan *vs.* Northup.

The act referred to is that of the 24th June, 1812 (2 Stat., 758), the twelfth section of which declares that executors and administrators appointed in any State or Territory may bring suit and recover claims within this District in the same manner as if appointed here. *The only reference made to this statute in Vaughan vs. Northup* is in reply to the argument founded on it, that foreign executors and administrators may *be sued* within this District. In disposing of that point this court says:

> Its [the statute's] obvious design was, therefore, to enable foreign executors and administrators to maintain suits, and to prosecute and recover claims in the District, *not against the Government alone*, but against any persons whatever resident within the District who were indebted to the deceased, and to discharge the debtor therefrom, without the grant of any local letters of administration.

Now, it is on no better warrant than the statement of this court that the act of 1812 embraced claims against the Government that the court below rests the deduction that all that is said about the ubiquity of the Government in Vaughan *vs.* Northup has its source in the act. Undoubtedly the language of the act is most general and comprehensive, but is it consequential to say that because the scope of the act reaches claims against Government, there-

fore what is broadly laid down by this court as a great principle of public law, without reference to legislation of any kind, must necessarily be accepted as *tacitly* founded on the statute in question? It is in this way that the court below imports into the judgment of this court a condition or qualification in support of its view that the 12th section of the act of 1812 being repealed by having been left out of the revision of the statutes of the District, all that is said in the opinion of this court as to debts due by Government having no locality in the District shares the fate of that section of the statute, and has no longer any force here. But the language of this court admits of no such circumscription, and the principle laid down in Vaughan *vs.* Northup is just as applicable now as it was when first given forth.

Undoubtedly the primary object of the act of 1812 was to enable executors and administrators appointed in the States and Territories to sue for private debts due here, without the necessity of a local administration. There was no necessity for the act in respect of debts due by the Government, to which extent the act was clearly a work of supererogation, as this court said, substantially, in Vaughan *vs.* Northup.

In 1854 the very point involved in this case came before Mr. Attorney-General Cushing (6 Opinions, 557). Robert Greenhow, a law agent of the United States in California, had recently died there. While it was yet in doubt whether Mr. Greenhow's domicile was in California or this District, letters *ad colligendum* were sued out on his estate in the latter jurisdiction by one Visher, who by virtue of them demanded from the National Treasury a sum of

money which had been appropriated by Congress to "the legal representatives of Robert Greenhow," and the Secretary of the Treasury, being to seek as to his duty in the premises, referred the matter to the Attorney General, who decided that the collector, Visher had no right to the fund. He said:

> Finally, it is well settled that the debts due from the Government of the United States, have no locality at the seat of Government. The United States in their sovereign capacity, says the supreme court, have no particular place of domicile, but possess in contemplation of law an ubiquity throughout the Union. (Vaughan *vs.* Northup, 15 Pet., pp. 1, 6.)
>
> It would, indeed, be wholly subversive of the fundamental theory of the Government to assume that all debts due from the United States are to be treated as local assets, so as to draw the administration and distribution thereof away from the State in which the decedent is domiciled, and subject them to the local law of the District of Columbia.
>
> The conclusion from all which is irresistible that the county of Washington has no lawful authority to meddle with the money in question, whether by appointment of administrator or collector, unless here is the exclusive and only lawful domicile of Mr. Greenhow, or unless his will be voluntarily proved here by his executor.

Can it be supposed for a moment that the National Government would allow itself to be obstructed in the performance of its duty to its creditors, foreign and domestic, by administrations set on foot in this District upon no better warrant than that money due by Government is *bona notabilia* here, and always liable to be intercepted by administration here, should the creditor die before satisfaction?

Again, if the doctrine laid down by the court below is correct no executor or administrator appointed in a State

or Territory can lawfully sue here in the Court of Claims, although it is done every day, regardless of the repeal of the twelfth section of the act of 1812, and money due on judgments recovered by such executors or administrators is liable to be intercepted by administration here.

Seeing that the doctrine of the ubiquity of Government proceeds on the concession that it must carry on its operations at some one or more seats, it is not perceived that the court's special reference to the legislation locating the Treasury here advances the argument any more than in England the impossibility of the King, as a natural person, being at more than one point of space at a time prevents the operation of the principle of omnipresence in his regal office. Speaking of his prerogative to be the fountain of justice, the commentator says:

> A consequence of this prerogative is the legal *ubiquity* of the King. His Majesty, in the eye of the law, is always present in all his courts, though he cannot personally distribute justice. His judges are the mirror by which the King's image is reflected. It is the regal office, and not the royal person, that is always present in court, always ready to undertake prosecutions or pronounce judgment for the benfit and protection of the subject. And from this ubiquity it follows that the King never can be nonsuited, for a nonsuit is the desertion of the suit or action by the non-appearance of the plaintiff in court. For the same reason, also, in the forms of legal proceedings, the King is not said to appear *by his attorney*, as other men do; for in contemplation of law he is always present in court. (1 Comm., 270.)

The idea advanced by the learned court below that the appropriations by Congress of the several sums due the Pulliams was the setting apart to them and the earmarking of so much money in the Treasury is, we submit, not

maintainable. Neither before nor since these appropriations have the Pulliams had more than a credit on the books of the Government. It has never been that either of them or his personal representative could point to any part of the moneys in the Treasury as his own.

It may be, as the court below shows, that the orphans court of this District has time and again granted letters of administration on the principle that debts due by Government were local assets here, but the question now raised was allowed to pass *sub silentio* in those cases, and consequently they are of no weight as precedents, nor could they under any circumstances sanctify the error in which they are founded, if error it be.

It is to be noted, however, that the line of reasoning adopted by the court below, which, as we conceive, fritters away the case of Vaughan *vs.* Northup, was not concurred in by Mr. Justice Cox, although he did concur in the judgment. In the view of this judge the act of 1812 had nothing whatever to do with the doctrine laid down in Vaughan *vs.* Northup, and relied on by the plaintiff in error.

The ground on which he concurred in the judgment of the court was that the debts were localized here by the Treasurer's act in making the drafts payable here. But it is submitted that it quite transcended the power of that officer to bring about any such result, and, by destroying the effect of the general law, subject the public creditor to the possible burden of an administration here.

In support of his view that the debts are made local assets by the Treasurer's act, the learned judge says that the domiciliary administrators could not have recovered the drafts from the agent who held them here. But is that

so? If the debts represented by the drafts are local assets in Tennessee could not the domiciliary administrators sue for the drafts here as so many muniments of title or evidences of right, which could be of no possible use in the hands of any personal representative appointed here, and, therefore, in no sense *bona notabilia* here?

But supposing this position of the learned judge to be sound, the argument is not thereby advanced, because the wrongful refusal of the agent here to surrender the drafts to the domicilary administrators, and their supposed powerlessness to recover them by suit in this District, would seem to afford just ground for issuing new drafts to them and declaring the old ones as no longer operative. At any rate the Treasurer could refuse to pay such drafts on the indorsement of any one except the administrator of the decedent's domicil, as he has done in this case.

Until the decision in this case it was supposed that the decision of the same court in the case of Bartley and Stanton *vs.* The La Abra Mining Company and one Ely had settled, as far as it could be settled by a court not of *dernier ressort*, and, certainly, as far as that court itself was concerned, that money due by Government to a non-resident of the District did not constitute a *res* within the District on which jurisdiction could be founded.

The complainants, Bartley and Stanton, claimed an assignment of part of a fund which was an instalment of an award that had been made in favor of the Mining Company, the defendant, by an international commission, and was in the hands of the Secretary of State for payment.

The defendants, the Mining Company, Ely and Adams, without whom no effective decree in the premises could be

made, pleaded to the jurisdiction of the court on the ground that neither the defendants nor the *res* in controversy were subject to that jurisdiction, and the court, after full argument by able and eminent counsel, dismissed the bill.

It is quite needless to add that what was not a *res* on which to found jurisdiction in equity, was not by parity of reasoning a *res* to set in motion the limited jurisdiction of the court sitting as a court of probate.

In the elaborate opinions in this case no attempt is made to distinguish it from the one just commented on, although it was insisted for the respondent Wyman, that that case was absolutely decisive of the case at bar. It is conceived that no attempt to reconcile the two cases could be successful.

A review of the cases in which the court in this District has properly taken cognizance of controversies touching money in the Treasury at the credit of private parties shows that they may be marshalled under two heads; (1) cases in which the court had obtained jurisdiction of the persons of the claimants, in which cases the Government, merely out of grace, generally consents to stand aloof as a stakeholder, ready to pay into any hand the court shall indicate by its decree, and (2) cases in which Congress had expressly empowered the court to take cognizance of all controversies as to the fund.

It is respectfully submitted that the judgment must be reversed and the case sent down with instructions to dismiss the petition.

WM. A. MAURY,
Assistant Attorney-General.

APPENDIX.

Supreme court District of Columbia. General term.

THE UNITED STATES EX REL. EMINEL P. Halstead, administrator of the estate of John N. and John J. Pulliam,
vs.
A. U. WYMAN, TREASURER OF THE United States.

Decided May 28, 1883. The Chief Justice and Justices Hagner and Cox sitting.

At law. No. 24413.

1. Letters of administration granted by the orphans' court of this District upon the local assets of a deceased non-resident entitle the administrator to receive and receipt for moneys due his intestate in the Treasury of the United States, at Washington; and whenever the payment of the same is a mere ministerial function, not involving the exercise of official discretion, and the officers of the Treasury refuse to pay the administrator, a *mandamus* will lie from this court to compel such payment.
2. Such moneys constitute personal assets of the deceased within this District.
3. Since the repeal of the act of June 24, 1812, by omission from the Revised Statutes, foreign administrators can neither sue nor be sued as such in the District of Columbia.

Plaintiff's attorney, A. L. Merriman.

Defendants' attorney, Wm. A. Maury, Assistant Attorney-General.

Mr. Justice Hagner delivered the opinion of the court.

This is an application by the petitioner for a writ of *mandamus* to enforce the payment to him, in his representative capacity, by the Treasurer, of the three drafts described in the proceedings.

In response to the usual rule to show cause, the Treasurer has

filed an answer, and the question has been fully argued by the counsel.

The facts requisite to an understanding of the case appear to be as follows:

By a law passed May 1, 1882, entitled, "An act for the allowance of certain claims reported by the accounting officers of the United States Treasury Department," it was enacted, "That the Secretary of the Treasury be, and he is hereby, authorized and required to pay, out of any money in the Treasury not otherwise appropriated, to the several persons in this act named, the several sums mentioned herein, the same being in full for, and the receipt of the same to be taken and accepted in each case a full and final discharge of the several claims examined and allowed by the proper accounting officers, under the provisions of the act of July 4, 1864, since December, 1880, namely, * * * to John J. Pulliam, of Fayette County, Kentucky, $1,223; to John J. Pulliam, of Fayette County, $545; to John J. Pulliam, executor of John N. Pulliam, deceased, of Fayette County, $3,020."

Two drafts were issued by the Treasurer, payable by himself as Treasurer, to the order of John J. Pulliam, for the two sums first named, and a third draft, payable to John J. Pulliam, as executor of John N. Pulliam, for the remaining sum.

These drafts were delivered to Halstead, the petitioner, the attorney and agent of John J. Pulliam, and are in his hands at this time.

John J. Pulliam, before indorsing the drafts, died in Tennessee, of which State he was a citizen. There has been no administration upon his personal estate in Tennessee, but an administrator was appointed in that State upon the personal estate of John N. Pulliam.

The petitioner, claiming to be a creditor of both of the Pulliams, applied to the orphans' court of the District of Columbia for letters of administration upon the estate of each of the Pulliams, and obtained letters of administration from that court.

Afterwards a bill was filed in equity in the supreme court of the District by Keyser, as receiver of the German-American Bank, against Halstead, as administrator, and against the Tennessee administrator of John N. Pulliam, claiming for the bank an interest in so much of the proceeds of the drafts as belonged to an agent of the Pulliams, by virtue of an assignment to the bank, and ask-

ing that the bank's claim should be recognized and discharged in the administration of the personal estates of the two Pulliams. To that bill Halstead, the administrator, answered, and a *pro confesso* decree was obtained against the Tennessee administrator of John N. Pulliam; and after evidence taken, a decree was passed appointing Halstead a trustee, and requiring him to indorse the drafts in his quality of administrator and trustee, recognizing the claim of the bank, but directing the administrator to settle his accounts in the orphans' court, and reserving final action upon the claim until that settlement.

The petitioner states that he indorsed the drafts according to the direction of the decree and presented them for payment to the Treasurer, who refused to pay them, and this petition is filed in the absence of any other remedy in the premises.

The death of the payees in the draft rendered it necessary that the payment should be made to some properly constituted representative of the deceased claimants. When such person should present them to the Treasurer it would appear that his duty to pay them was a perfectly plain one, in no degree involving the exercise of anything in the nature of official discretion; but more evidently a plain, ministerial function than this court recently held in the case of Key *vs.* Frelinghuysen, was devolved upon the Secretary of State to pay out money appropriated to discharge an award of the board of commissioners under a treaty with Mexico.

That the petitioner's appointment was regular is not a matter that can be questioned ordinarily in a proceeding like this. The Treasurer in this case, as in all others, has a right to ascertain whether the petitioner is the person he claims to be, but with the identification, ordinarily, the inquiry would end, and the payment be made.

But the Treasurer certifies in his answer that he is advised by the First Comptroller that, notwithstanding the action of the orphans' court of the District of Columbia in making the appointment, the petitioner has no right to receive these awards, because they do not constitute personal assets of the deceased within this District which may rightfully be claimed by such an appointee, but that they are properly payable to the personal representative of the domicile where the claimants died, in the State of Tennessee.

Assuming that this defense may properly be made by the respond-

ent, the only obstacle to the payment will be removed if by the decision of a competent court he is advised that the objection is not well founded.

The high official and personal character of the distinguished officials who present this reason for withholding payment of the drafts renders it proper that the question should be carefully considered by this court, and we have given to the subject a painstaking examination.

That the position assumed by the Treasurer is at variance with the general principles governing the administration of the effects of a deceased person lying beyond his place of domicile is too plain for question. According to the universally admitted theory on the subject, the administrator of the domicile is powerless to sue or compel payment of money due the deceased beyond the limits of the territory where he was appointed, or to collect assets of the deceased in any other jurisdiction; and nothing, except a statutory provision enacted in the place *rei sitæ* can confer such an authority.

Judge Story, in his work on the conflict of laws, section. 523, uses this language, after stating the principle in emphatic terms:

"So strict is the principle that a foreign administrator cannot do any act as administrator in another State, that where the local laws convert real securities in the hands of an administrator into personal assets, which he may sell or assign, he cannot dispose of such real securities until he has taken out letters of administration in the place *rei sitæ*. Thus mortgages are declared by the law of Massachusetts to be personal assets in the hands of administrators, and disposable by them accordingly. But the authority cannot be exercised by any except administrators who have been duly appointed within the State. So if, on the other hand, an administrator sells real estate for the payment of debts, pursuant to the authority given him under the local laws, *rei sitæ*, he is not responsible for the proceeds as assets in any other State. but they are to be disposed of and accounted for solely in the place and in the manner pointed out in the local laws."

It is argued, however, that this general principle has no application in this District *with respect to the moneys in the Treasury*, and that this distinction is well settled by the decisions of the Supreme Court in the cases of Kane *vs.* Paul, 14 Peters, 33, and Vaughan *vs.* Northup, 15 Peters, 1.

In my opinion the language used in those cases is inapplicable to

the existing state of the law within this District since the adoption by Congress of the Revised Statutes of the District in 1874.

The apparent generality of the language used by the court may be explained by the consideration that when those decisions were announced (1840–1) there was in force within the District of Columbia, as a constituent part of the testamentary law the act of Congress of 24th June, 1812, which provided that it should be lawful for any person to whom letters of administration or testamentary should be granted in any of the United States or Territories thereof, to maintain any suit or action or to prosecute or recover any claim in the District of Columbia in the same manner as if the letters of administration or testamentary had been granted within the District. This law came into force only eleven years after the establishment of the District, and in 1840 seemed to be as firmly fixed as any other part of the testamentary law, and as little likely to be repealed by Congress or omitted in any revision of the statutes as any other provision of the system; and, as it appears to me, it was only because of the existence of this provision, merged as a constituent in the testamentary code at the time, that the court used the language referred to.

In the case in 14 Peters the court only decided that letters of administration *de bonis non cum testamento annexo* granted in the District of Columbia, on the personal estate of a non-resident, upon the allegation that the executors who had qualified in Maryland were dead, when one of them was really living, were, for that reason, void, and that upon the appearance of that executor the administrator *de bonis non* was bound to surrender to him the moneys he had collected from the Treasury upon a claim of the deceased allowed by commissioners under a treaty with France.

The court did not undertake to decide that the grant of letters *de bonis non* here would not have been valid if the executors had both been dead, as was represented to the orphans' court when it made the appointment, but, as it expressly says, the answer to the question whether the letters testamentary in Maryland should prevail over letters granted in the District of Columbia depends upon the legal character of the latter letters—"are they void or voidable"—and the court declares, as we have stated, that under the circumstances of the case they were "void *ab initio*."

But the court went further, and in answering the inquiry as to what rights letters testamentary or of administration granted in

either of the States of the Union can give to an executor or administrator in the District of Columbia, except the right to sue given by the act of 1812, says that "the right to sue, *in the manner it is given*, gives the right to such executor or administrator to *receive from the Government, either in the District or in the State where letters have been granted*, any sum of money which the Government may owe to a testator or intestate at the time of his death, or which may become due thereafter, or which may accrue from the Government to a testator in any way or at any time."

In the case in 15 Peters the question presented was whether the next of kin and heirs of an intestate, dying in Kentucky, could sustain a bill in equity in this District against a non-resident administrator of the deceased, appointed in Kentucky, to recover their shares of a sum collected from the Treasury by the administrator for military services of the deceased. The court held that the act of 1812 did not authorize such a suit against the Kentucky administrator within the District of Columbia although he was summoned here; but only empowered the foreign administrator to sue and prosecute and recover claims due the deceased, and that moneys so collected from the Treasury constituted assets under the Kentucky administration and that distribution should be sought there. It was in reply to the argument that the foreign administrator might be made liable here because the money was collected here and so constituted local assets within the District that Justice Story, speaking for the court, said:

"The debts due from the Government of the United States have no locality at the seat of Government. The United States in their sovereign capacity have no particular place of domicile, but possess, in contemplation of law, an ubiquity throughout the Union; and the debts due by them are not to be treated like *the debts of a private debtor which constitute local assets in his own domicile.* On the contrary, the administrator of a creditor of the Government, duly appointed in the State where he was domiciled at his death, has full authority to receive payment and give a full discharge of the debt due to his intestate in any place where the Government may choose to pay it, whether it be at the seat of Government or at any other place where the public funds are deposited. If any other doctrine were to be recognized the consequence would be that before the personal representative of any deceased debtor [creditor?] belonging to any State in the Union would be entitled to receive

payment of any debt due by the Government, he would be compellable to take out letters of administration in this District for the due administration of such assets. Such a doctrine has never yet been sanctioned by any practice of the Government, and would be full of public as well as private inconvenience."

So far as this opinion sustains the validity of a release by a foreign administrator of a debt due to his intestate, it is but a statement of undoubted law, which has been carried so far that it has been held that a *bona fide*, voluntary payment to an administrator of a debt due to the estate is a legal discharge of the debtor, although the grant of administration afterwards proves to have been voidable or even void. (Allen *v.* Dundas, 3 T. R., 125, cited in 14 Peters, 41; see also Mackey *v.* Coxe, 18 How., 104.) And this is but an example of a class of cases where the court, in the interest of peace and to prevent loss to one who has acted *bona fide* under a mistake induced by an appearance of right or title, sometimes refuses to subject the innocent debtor to the punishment of a second payment without designing in the least degree to indorse the propriety of such a course for the future.

But that the opinion, so far as it declares it to be *unnecessary* for the foreign administrator to take out letters here (for it does not say he may not do so), is founded upon the feature of the testamentary law, which was engrafted upon it by the act of June 24, 1812, in my judgment is sufficiently shown in a subsequent portion, where the learned judge, in construing that act, says: "It does not authorize any suits or actions in the District against any such executor or administrator. *Its* obvious design was, therefore, to enable foreign executors and administrators to maintain suits and to prosecute and recover claims in the District, *not against the Government alone*, but against any person whatever, resident within the District, who were indebted to the deceased, and to discharge the debtor therefrom without the grant of any local letters of administration. In effect *it* made *all* debts due from persons within the District, not local assets, for which a personal representative would be liable to account in the courts of the District, but general assets, which he had full authority to receive, and for which he was bound to account in the court of the State from which he derived his original letters of administration.

It was the act of 1812, therefore, which, according to this statement of the court, had worked so marked a change in the general

principles of the law of administration as to convert local assets into general assets; and such words, clearly, would not have been used if that act had not been in existence.

This construction is strengthened by the language of the court in the subsequent case of Mackey *v.* Coxe, 18 How., 104. This was an action at law brought in this District against the sureties on the bond of one Raines, who was appointed by the orphans' court of the District of Columbia, administrator upon the personal estate of Samuel Mackey, a Cherokee Indian. There had been an administration at the domicile of the deceased, and the administrators had constituted Raines their agent to draw the money. But it appears from the opinion of the court that the Treasury Department refused to pay Raines on this order, and required him to take out letters of administration here, which were accordingly granted him by the orphans' court of the District. The Treasury officers then paid him the money; and as agent of the Cherokee administrators, Raines receipted to himself as administrator in the District for the money received. He lost his life and the money on his way home, and this suit was brought by the surviving administrator and distributees of the deceased. The court decided that the letters of administration in the Cherokee country were entitled to the same respect as those of any of the States; and proceeding to consider the effect of the act of 1812, which its quotes at length, says: "Under this law the money due to Mackey might have been paid, and indeed should have been paid to Raines, the attorney in fact of the administrators of Mackey. But, through abundant caution, letters of administration were required to be taken out in this District as a prerequisite to the payment of the money by the Treasury Department."

It thus appears that the court ascribes the right of the Cherokee administrators to demand the money from the Treasury to the act of 1812, and to that alone. It nowhere says that the orphans' court of the District was without authority to grant the letters, or that the claim against the Government was not assets in the District. His receipt to the Treasury as local administrator was recognized as a full discharge of the claim, and the court throughout speaks of the administration as if it were perfectly valid. Thus, on page 104, it is said, "This suit is brought in the name of the surviving administrators of Mackey and of the distributees. Regularly an action of the distributees cannot be maintained unless

an application has been made to the orphans' court in this District to order a distribution and to authorize or direct the administrator, Raines, to pay the same. This administration being ancillary to that of the domicile of the deceased, the distribution would be governed by the law of the domicile."

Justices Nelson and Curtis, in their separate opinion, stated that they concurred in the decision of the court, "upon the ground that as no final account had been settled by the administrators in the orphans' court, and no order had been made by the court, either directing the administrator to pay the balance in his hands to the principal administrators, for distribution of them, or directing a distribution to be made by them, there was no breach of the bond. This being an ancillary administration it depended upon the discretion of the orphans' court which granted it whether the money remaining in the hands of the ancillary administrator, after the satisfaction of all claims in this jurisdiction, should be distributed here by the ancillary administrator or remitted to the principal administrators for distribution; and until that discretion shall be exercised, and the ancillary administrator directed which of these courses to pursue, he is in no default, and his surety is not liable."

Certainly there is no intimation here that the grant of letters in the District was void or voidable or in any respect irregular, or that the claim against the Treasury collected and receipted for by the administrator under his letters here was not assets properly receivable by him like any other assets due the estate of the intestate within this jurisdiction. And these cases occurred while the act of 1812 was in full force.

In Story's Conflict of Laws, already quoted, the examination of the claims of administrations under different jurisdictions is continued as follows: "The subject came again under consideration before the same court in Mackey *v.* Coxe (just quoted), where it was decided that an administrator appointed in the Cherokee country might receive payment of a debt in the District of Columbia, and his discharge, or that of his authorized attorney, will be valid. *But this is upon the ground that by the act of Congress he might sue in that District.* He did, however, out of abundant caution, take out letters of administration in that District." And the author proceeds to state that the true law in regard to ancillary administration is stated in that case by Justices Nelson and Curtis in the opinion quoted above.

It seems quite evident that the learned author attributed to the force of the act of 1812 alone the novel powers ascribed to foreign administrators within the District of Columbia in the decisions above referred to—powers that could not have been claimed at the time within any other jurisdiction in the Union, and which at this time can rightfully be claimed nowhere, unless in virtue of a similar statute.

But, as is well known, since the adoption of the revision of the District laws in June, 1874, the act of 24th June, 1812, is no longer in existence, and we are consequently remitted to the condition of the law in this respect as it existed before the passage of that statute, and which it was the purpose of the legislators to change by its enactment. And I submit it is impossible to contend that in the absence of that law any foreign administrator or any other person can compel the collection of a private debt due here to his intestate, or pass title to personal property of the intestate found here, without first taking out letters of administration from the orphan's court of the District.

Is there any ground for supposing that such an administration is unnecessary and improper where the property belonging to the deceased consists of money due from the Government under an appropriation by law?

The money claimed in this case was appropriated by Congress to the Pulliams. They were ascertained sums nominated in the statute and unchangeable to the extent of a cent by any officer of the Government; nor is it in the power of the Government, in any way, to resume ownership of the fund. It belonged to the designated claimants as fully as any property they might justly call their own. It is so completely segregated from the unappropriated money in the Treasury that by section 306, Revised Statutes, where such drafts as those before us shall remain outstanding and unpaid for three years, their amount must be *deposited* by the Treasurer and covered into the Treasury by warrants, and be carried *to the credit of the parties to whose favor they were issued*, or to the persons entitled to receive pay therefor; and carried into "an appropriation account denominated outstanding liabilities." It is not easy to devise a plan more effectually earmarking the money called for by the draft with the name of its true owner.

And it is an important consideration, in view of the language of the court in 15 Peters, that the provision just cited was adopted in

1866, twenty-five years after that decision. In the same connection, in my opinion, it is important to notice the provision of the act of 1846, 6th August, entitled "An act to provide for the better organization of the Treasury, which recited that it had been found necessary to make further provision to enable the Treasurer the better to carry into effect the act of September 2, 1789.

By section 1 of that statute (Rev. Stats., sec. 3591) it was declared that "the rooms provided in the Treasury building at the seat of Government for the use of the Treasurer, his assistants and clerks, with the fire-proof vaults and safes, erected for the safe keeping of the public money, and such other apartments as are provided as places of deposit for the public money, shall be the Treasury of the United States." The article provides for other places where public moneys shall be deposited, under the designation of mints, assay offices, and offices of assistant treasurers. The superintendent of one of the mints and of an assay office are constituted assistant treasurers, and the statute declares that the rooms assigned by law to be occupied by the assistant treasurers, together with the fire-proof vaults therein or connected therewith, shall be appropriated to the use of the assistant treasurer and for the safe keeping of the public moneys deposited with them respectively.

But when these depositories are referred to in the laws they are mentioned by distinctive names, in contradistinction to the establishment at Washington, which, with its rooms and departments was to be recognized as referred to whenever the word Treasury was used. This discrimination is preserved in several of the subsequent sections of the article.

Thus by section 3615 all collectors and receivers of public moneys within the District of Columbia are required, when directed, to pay over all such moneys "to the Treasurer of the United States *at the Treasury;*" whereas, by the same section, the collectors and receivers of public moneys at New York, Philadelphia, &c., are required to pay such moneys to the assistant treasurers at these cities, at their *offices respectively*, not describing them as the Treasury.

So, by section 3641, the Postmaster-General is authorized to transfer moneys belonging to the postal service between the Treasurer, assistant treasurers, and designated depositaries, at his discretion, &c., sustaining the idea that a transfer to an assistant treasurer is not a transfer to the Treasurer, and describing the place of transfer to the official home of that officer.

In Cooke *v.* United States (91 U. S., 402), the Supreme Court declared that United States notes which are not made payable at any particular place are, consequently, in law payable at the Treasury, and this is at the seat of Government, and in the Treasury Department; and that the receipt and payment by the assistant treasurer in New York of such notes, authorized to be retired before maturity, was not a payment or redemption by or at the Treasury Department, and did not retire the notes without a further order of the Secretary.

Other provisions are to be found in the statutes where the expression "Treasury of the United States" is evidently used to denote only the office of the Treasurer located at Washington, as is the case with respect to the redemption of the notes of national banks which have refused payment. The law says they shall be paid at *the Treasury*. Would any holder of such a bank note think of applying to an assistant treasurer or other depositary for its redemption? He might ask for its redemption of every assistant treasurer and mint and assay office from Maine to Alaska, and he would receive a negative answer from every one, nor could he obtain the money until he should apply to the place designated in the law—the Treasury at Washington City. But it is unnecessary to pursue the subject further.

Of course, in a general sense, all public moneys may be said to be in the Treasury wherever they may be, but Congress did not mean to enact this truism. It meant, as it seems to me, to draw a distinction between the Treasury proper and its branches and agencies; to localize the chief treasure house of the nation at the seat of Government; at the place where the Treasurer is required to perform his public duties in the city of Washington, where this money now is.

Why should not the money represented by these debts and set aside for their payment, be considered local assets here? It has all the characteristics of other assets. It is vendible and assignable. By the testamentary law of Maryland of 1798, ch. 101, sub-ch. 14, § 3, in force here, "a common warrant for land not executed or located in the life-time of the deceased, shall be assets after his death, in the hands of an executor or administrator, and subject to distribution, as well as *every debt due to, or just claim of, the deceased.*"

That the money appropriated and set apart for the payment of these debts would constitute *debts due to the deceased, and just claims*

on their part, it seems impossible to deny. If it is not assets *somewhere*, how can it be received by the foreign administrator in his jurisdiction? And the Government is as much placing its own indebtedness upon the plane of the indebtedness of one of its own citizens, by admitting the claim of a foreign administrator to receive the money as assets, as it would be if it paid it at once to the administrator within the District. The *common warrant* spoken of in the section quoted above, was an incipient patent of State lands to be exchanged after location for a patent. That which it represented was still within the State offices not yet formulated or separated from the other possessions of the State; and yet Maryland admitted that such a common warrant should be considered as assets of the deceased.

If the ubiquity properly claimed for the Government of the United States is to be ascribed to the debts due by the Government, there would seem to be no good reason why those debts should not be payable as well in Washington as elsewhere. Ubiquity implies *universal presence*, not uniform *absence*. And if the debts are to be considered as *everywhere*, it is inconceivable to me that the money especially appropriated and dedicated to pay them, evidenced by the Treasurer's draft payable here, should be held to be absent from the only place in the country where in fact and truth it actually is—in the Treasury of the United States in Washington City.

It was only the debts of the Government which the court declared had no locality at the seat of Government. But they are capable of being localized. A draft of the Treasurer payable at Boise City is not payable elsewhere, although the Treasurer might have directed its payment at some other locality, in which case it would have been payable only at that place. These drafts are payable at Washington, at the Treasury of the nation, and here only they are properly payable as they now stand.

Every consideration of propriety suggests the advantage of making payment to a person appointed here, whose qualification, bond, and character can readily be inquired into, rather than to one who may have administered at a great distance, and without real assurance of safety to the fund.

And as it cannot be denied that, under the law as it now stands, there must be local administration here to pass title to all other personalty that may be found here belonging to a non-resident,

convenience and equal justice would dictate that this same tribunal should be allowed to administer other personal effects in the form of moneys to be derived from the Government. Why should local creditors be driven to two rival representatives, especially as the law of the District may possibly reject their claims, and they may thus be deprived of their just due because of the refusal of the Government authorities to pay the money to the administrator of the jurisdiction where the debts were contracted, perhaps upon the faith that the claim against the Government was to be the source from which the creditors were to be paid?

The other courts of the system within the District have repeatedly taken cognizance of suits respecting funds in the Treasury claimed by rival parties, and have recognized that the moneys in these cases before them were within the District and the jurisdiction of its tribunals. It is true that in the early case of Comegys *vs.* Vasse, in 1825, the circuit court used this language: "The fund out of which the claims are to be paid are in the Treasury of the United States. Where is that? The Treasurer resides at Washington and the head of the Department; but is the money there?" The bill was filed by a bankrupt, claiming an account from his assignees and that they should discover what amount they intended to claim before a commission under a Spanish treaty on complainant's accounts, and that they should be enjoined from receiving whatever amount may be decided by the commission under the treaty to be due on that claim, and that a like injunction should go against the Treasurer. It may be that the negative answer of the court to its own inquiry was predicated on the fact that the money had not yet been awarded to the claim upon the theory enunciated by the Supreme Court of the United States in the case of Clark *vs.* Clark (17 How.), 322, that "the fund had no existence till the award was made."

But whatever may have been the reason for their refusal it is certainly at variance with subsequent declarations of the same court and of the Supreme Court of the United States. In the numerous cases arising under the mixed commissions for the adjustment of the claims between this country and Great Britain and Mexico it seems to have been assumed that the money, after it had been placed in the Treasury for distribution to the American claimants by the Secretary of State or Secretary of the Treasury, was properly to be considered as at the seat of Government.

Mr. Justice Wylie, in his opinion in McManus *et al. vs.* Standish *et al.*, (1 Mackey, 152), examines a number of these cases at length and decides that this court had jurisdiction in that case. All the parties were non-residents, but all the essential ones, it was held, had appeared in the court. In the conclusion of this branch of his opinion he says: "We do not wish to intimate an opinion, or an impression even, that if the fund is in the Treasury, and if the party is not here, that that would make any difference. That is not the question to be decided in the cases now under consideration. We are not required to go beyond the fact that the fund is *in the Treasury here*, and the parties claiming the fund are before the court; and this we hold gives us jurisdiction here."

The money referred to in that case was paid by the Mexican Government, and was in the Treasury, subject to the order of the Secretary of State, and the justice declares it is in the Treasury here.

In this large class of cases which have been before the courts of the District, and many of them before the Supreme Court upon appeal, the action of the courts seems to be consistent only with the idea that moneys thus circumstanced were to be considered as in the Treasury in Washington City.

Thus in the case of Whitney *et al. vs.* Dey *et al.*, which was a contest between claimants to an award under a Mexican commission, the bill, which was filed in 1851, prayed for an injunction against the defendants, who were all non-residents, and also against the Secretary of the Treasury, although he was not made a party to the suit.

The circuit court ordered the injunction to issue before answer or appearance, and it was issued as prayed, served upon the Secretary, and by him respected, as were also the subsequent orders passed by this court after its organization, requiring the payment by the Secretary of portions of the award.

The same course was pursued in the subsequent case of Clark *vs.* Clark (17 How., 315), which was cited with approval in Phelps *vs.* McDonald (99 U. S., 806). There, too, the defendants were non-residents and an injunction was issued against the Secretary of the Treasury, though he was not made a party.

In the case of Pemberton *v.* Lockwood (21 How., 257), the Secretary of State was made a defendant with others who were non-residents, to a bill seeking payment of part of an award made to the owners of slaves liberated from the ship Creole Mr. Marcy,

the Secretary, himself a distinguished jurist, answered the bill, not questioning the jurisdiction of the courts, the money having been placed in the Treasury to pay these awards upon the orders of the Secretary of State.

I will refer now to some cases not arising under the operation of a statute authorizing litigation in this jurisdiction, as was the case with respect to those we have been considering.

In the case of Ridgeway *v.* Hayes (5 Cranch C. C. R., 34), where an award by commissioners under a French treaty was the subject of controversy, one of the claimants applied to the circuit court for an injunction against the Treasury officers to prevent the payment of the money out of the Treasury to the defendant. The language of the court in the case of Comegys *v.* Vasse, before quoted, was cited to show a want of jurisdiction to grant the relief. But the Chief Justice replied: "In the present case the fund is placed in the Treasury of the United States as in a place of deposit only, and the United States are merely trustees;" and he proceeds to say that he cannot "see why the United States, in cases in which they are merely stakeholders, should not submit to these decisions and aid those tribunals in the due administration of justice."

A similar decision was made in the case of Duthill, administrator, *v.* Courvault, reported in the same volume, in which Congress, to carry out a French treaty, made a provision for a suit to be brought in the District of Columbia. This was the case that went to the Supreme Court, and is reported in 14 Peters, 33.

In the case of Milner *v.* Metz (16 Peters, 221, Metz), as trustee, filed his bill against several non-residents, and the Secretary of the Treasury, as a codefendant, to enjoin the receipt by the defendant of a sum appropriated by a private act of Congress to his assignor for extra services. The court granted a perpetual injunction as prayed, which was sustained by the Supreme Court on appeal. The jurisdiction of the court could only have been based upon the idea that the money was within the jurisdiction of the court at the seat of Government, for there was no special statute conferring jurisdiction, and the defendants, except the Secretary, were residents of Pennsylvania.

The circumstances of the case of Kinney *v.* Meguire, recently decided by the equity court, were very much like those of the present case. Several drafts had been issued by the Treasurer, under a private act of Congress, payable to the order of sundry sailors, who

had been impressed by Admiral Porter for service in the Red River during the war, and were captured and retained as prisoners until the close of hostilities. These drafts were delivered to Meguire, who had been, and claimed to be still, their attorney. He was a resident of Ohio, and left the jurisdiction with the drafts in his possession. Kinney, who exhibited properly authenticated powers of attorney since the issue of the warrants, applied to the Treasurer for the issue of other drafts, and the bill was filed to procure an injunction to forbid Meguire from asserting title under the drafts in his possession. Meguire never answered, but there had been publication against him under section 787, Revised Statutes District of Columbia, which allows that as a substitute for personal service "in all actions at law or in equity which have for their immediate object the enforcement or establishment of any lawful right, claim, or demand to or against any real or personal property *within the jurisdiction of the court*," and this court decreed according to the prayer of the bill, after full argument, upon the ground that the money belonging to the claimants, to pay which these drafts had been issued, was in the Treasury at Washington, and therefore within the jurisdiction of the court. It was understood that other drafts would be issued by the Treasurer if the court should decide against the legal right of Meguire to retain those already issued.

It seems plain, then, that when the orphans' court considered the funds claimed in this proceeding as localized, so as to be proper subjects of jurisdiction here, it was but acting in accord with the established practice of the other branches of the court. During the existence of the act of June 24, 1812, it was unnecessary and useless to take cognizance of such funds as local assets here, but this was because, and only because, of the existence of that statute.

The learned justice, in the opinion in Vaughan *v.* Northrop, in combatting the idea that the personal representative of a nonresident creditor of the Government should take out letters within the District of Columbia before he could receive the claim, declares, "such a doctrine has never yet been sanctioned by any practice of the Government."

With due submission to the distinguished jurist, I venture the statement that the facts disclosed by our records do not bear out the assertion that it has not been the practice of the Government to pay claims to local administrators appointed by the orphans' court of the District. The records of that tribunal abund-

antly show that from its origin it exercised the power of granting letters here upon property within the District of Columbia belonging to non-residents, whether that property consisted of claims against the Government, or other "debts due to, or just claims of the deceased."

The dockets of administration very seldom furnish any memoranda indicating whether the deceased was a resident or a non-resident, and thus the number of references suggested in that manner are fewer, in all probability, than the facts would warrant. But the cases where such memoranda occur have been examined, and two hundred and seventeen instances are found from 1801 to 1812 inclusive, where letters were granted on the estates of non-residents; by far the larger number of whom are described as attached to the Army or Navy, or Marine Corps.

The first of these cases was on July 22, 1802, where letters were issued on the estate of a sailor, late of the United States frigate President. In the same year letters were granted to the executors of General Washington on his personal estate in this District. In 1805 administration was granted to Capt. Daniel Cormick on the personal estate of twenty-nine persons late of the United States Marine Corps. It seems almost certain that the object of this administration was to obtain pay or prize-money due by the Government, as was expressed on the docket entries in a later case, "to enable the father of William Rogers to receive from the Government the pay due his dead son."

In 1807 letters were granted on the personal estate of Chancellor Hanson, of Maryland.

The granting of such letters would naturally have been less frequent after the passage of the act of 1812, although it continued in each year from that time to a greater or less extent. Thus from 1813 to 1825 inclusive letters were granted on the estates of non-residents in one hundred and seventy cases. Selecting another period, I find one hundred and twenty such cases between 1836 and 1844 inclusive; and selecting still another period, fifty-nine such cases were between 1874 and 1877 inclusive.

The case of Mackey *vs.* Coxe in 18 Howard, already cited, shows that the Treasury officials about 1840 required the agent of the administrator of the deceased to take out letters in the District before they would pay him the money due his intestate. As expressed by Justice McLean in the opinion of the court, "There appears to

have been no creditors of the estate of Mackey in the District of Columbia, and letters of administration were obtained here, as necessary under the decision of the Treasury Department. So, in the year 1849, letters of administration were granted to Andrew Wylie upon the estate of Samuel Baldwin, described in the proceedings as a citizen of Pennsylvania, and the administrator thus appointed collected from the Treasury a considerable sum of money awarded to the estate of the intestate under the treaty with Mexico. There was no pretense that there were other assets, and this payment was made while the act of 1812 was in force and eight years after the decision in Vaughan *vs.* Northup had been announced.

After the act of 1812 had been repealed the practice was continued, and though such applications were sometimes resisted, upon the authority of Vaughan *vs.* Northup, yet the court appeared to have no difficulty in granting the letters. A few of the more recent cases may be referred to here.

After the close of the war the executrix of Horatio Ames, of Connecticut, where she had taken out letters, applied for letters to the orphans' court here, alleging that the expected assets consisted of a large claim against the Government for munitions of war furnished the Government. They were issued to her, and in 1871 application was made for their revocation, averring a waste of the moneys received from that source.

The application was granted, the objection appearing to have been made that under the act of 1812 the letters here were useless, if not improper.

In 1875, however, after the repeal of that law, an application for letters here was made to the same court, and Nathaniel Wilson was appointed by Justice Olin, and gave bond in the penalty of $160,000.

In the same year James P. Hamilton was appointed administrator of Benjamin Early, and charged himself in his account of assets with $3,549.50, being "the amount received from the Treasury Department of the United States for cotton seized and used by the United States Government."

In 1876 letters were granted to Charles D. Pennebacker upon the estate of one Snyder, of Hardin County, Kentucky, the petition alleging "that Snyder had assets in the District of Columbia consisting of one United States Treasury draft, No. 5332, for $713,"

which draft was then in the hands of the petitioner, as the attorney of the deceased.

And on the same day letters were granted to Pennebacker on the estate of one Branham, of Kentucky, the assets being described as "a claim allowed against the Government."

In 1879 John Campbell applied for letters upon the personal estate of one Springer, of New York, alleging that, as administrator of Springer, under letters issued at the place of the domicile, he had brought suit in this District in respect of a claim due the estate; but that the defendant, in his plea, had denied the right of a foreign administrator to maintain the suit, which plea had been sustained by the general term; and he accordingly applied for the ancillary letters for that purpose, and the letters were issued accordingly.

In January, 1880, Allan Rutherford, of North Carolina, applied for and obtained letters upon the personal estate of F. W. Beers, of New York, averring that he was a creditor of the deceased, and that "the only property or personal estate left by the deceased is a Treasury draft, payable to the decedent," and the court issued the letters.

And in March, 1881, Mr. Henkle, a member of this bar, applied for letters of administration upon the personal estate of John P. Sherburne, who, it was charged, resided in San Francisco and had recently died there, leaving personal estate in the District of Columbia, consisting of a certain claim of about $1,500, against the United States, then in the Court of Claims. The petitioner averred that he had been the attorney of the claimant and as such was a creditor, and as the Attorney-General was urging the trial of the case it was necessary that an administration be granted here, and it was done accordingly.

The case of General Burnside occurs to me as one of the more recent cases. That distinguished and excellent gentleman died in Rhode Island, of which State he was a Senator in Congress. His administrators there applied for letters here in respect of his personal assets here, and passed their accounts here as required by law.

In 1876, a large number of letters were granted to Mr. Lowndes, upon the estates of Hawaiian sailors who had claims before the Alabama Claims Commission, and similar letters were recently granted to the same gentleman in seventy-six similar cases, where there had

been administration in the place of their domicile; but it was represented to the orphans' court that the rules of the Alabama Commission required that letters of administration should be taken out before the claims could be considered.

In fact, if the practice of a tribunal and its frequent claim of jurisdiction can be regarded in any case as proof tending to show the rightfulness of the claim, the consistent practice of the orphans' court of the District of Columbia in this particular cannot fail to have great weight in support of the jurisdiction claimed.

I am unwilling to concede that this constant practice of our predecessors and ourselves is unwarranted, and that the Government officials have also been hitherto acting upon a similar incorrect construction of the law. On the contrary, I believe that since the repeal of the act of 1812 the jurisdiction of the orphans' court of the District of Columbia to issue letters of administration, whether the property alleged to belong to the non-resident deceased consists of ordinary personal effects, or of claims or debts due by the deceased, whether by private individuals or by the Government, is clear, and that it is its duty to grant the letters upon proper application and compliance with the requirements of the law.

We are all of the opinion that the writ should issue, requiring the Treasurer to make payment of the amounts specified in the three drafts, to the petitioner as administrator of John J. and of John N. Pulliam.

We cannot regard the decree of the equity court referred to in the petition as effective at all against the administrator in Tennessee, since he is not amenable to suit as administrator in this jurisdiction.

The reservation in that decree, which requires the District administrator to account fully for the personal estates of his intestates, will allow full opportunity for a contest by those interested, if they believe Keyser's claim is not properly supported by proof.

The several equity causes mentioned in this opinion have been referred to only for the purpose of showing that in those instances funds in the Treasury have been considered as localized here, and only for that purpose. Nor are we to be understood as agreeing to release in the slightest degree the wholesome principle founded alike upon reasons of public policy and convenience that exempts from attachment funds in the hands of Government officials or other public officers.

Mr. JUSTICE COX, while concurring in the conclusion of the court, said that he dissented from the reasons given therefor, and thereupon read the following opinion:

The petitioner, Halstead, shows, that on the 17th of June, 1882, the Treasurer issued certain drafts, in pursuance of appropriations made by Congress, in favor of John J. Pulliam, in his own right, and another to him as executor of John N. Pulliam, payable at the Treasury in Washington, and delivered them to the petitioner as his attorney. John J. Pulliam having died, petitioner subsequently obtained from the orphans' court of this District letters of administration on the estates of both the Pulliams. He also sets forth that in a certain chancery cause he was directed by decree of this court to indorse these drafts and collect them at the Treasury, and distribute the proceeds in a manner set forth in the decree; that in pursuance of the decree he indorsed the drafts and demanded payment of them of the Treasurer, which was refused, although the Treasurer has funds in his possession for their payment; and he asks a *mandamus* requiring him to pay them to the petitioner.

The Treasurer answers that he is ready to pay to any one legally authorized to receive the money, but that the domicile of the Pulliams was in Tennessee, and there was no assets of theirs in the District of Columbia, and the orphans' court had no jurisdiction to grant letters of administration on their estates, and the letters of the petitioner are void; that even if not void they conferred no right to assets out of the District of Columbia, and that the debts represented by these drafts have no local *situs* here, but belong to the administrator of the domicile; that the administrator of the domicile and the respondent were not parties to the decree referred to in the petition, and not bound by it.

I do not deem it necessary to consider the effect of the decree above referred to, but shall confine my examination of the case to the effect of the letters of administration issued to the petitioner and the extent of the authority conferred by them.

I understand the law as to the rights of executors and administrators, with respect to property in different jurisdictions, to be as follows:

An executor or an administrator appointed at the domicile of the deceased is entitled to the personal estate situated everywhere, subject to the rights of local creditors, to be secured by local admin-

istration, but he cannot maintain a suit to recover any property outside of the jurisdiction where he receives his letters. If such a suit becomes necessary inorder to possess himself of the property he must either obtain new letters or procure another to take them out in the jurisdiction where the property is. This new administration is called an ancillary administration, and the assets received under it are to be applied to the payment of local creditors, and the residiuum, if any, is to be turned over to the administrator of the domicile for distribution under the law of that place. Among the assets which a deceased may leave are debts due him. As Lord Abinger says in Atty. Gen'l *vs.* Bonevires, 2 M. & W., 171; Story's Conflict of Laws, 421, and *seq.*: "As to the locality of many descriptions of effects, household and movable goods for instance, there never could be any dispute. But to prevent conflicting jurisdictions between different ordinaries with respect to choses in action and titles to property, it was established as law, that judgment debts were assets for the purposes of jurisdiction where the judgment is recorded; leases where the law [land ?] lies; specialty debts where the instrument happens to be; simple contract debts where the debtor resides at the time of the testator's death; and it was also decided that as bills of exchange and promissory notes do not alter the nature of the simple contract debts, but are merely evidences of title, the debts due on these instruments were assets where the debtor lived, and not where the instrument was found. In truth, with respect to similar contract debts, the only act of administration that could be performed by the ordinary would be to recover or receive payment of the debt, and that would be done by him within whose jurisdiction the debtor happened to be. These distinctions being well established, it seems to follow that no ordinary in England could perform any act of administration in his diocese with respect to debts due from persons resident abroad," &c.

It would follow that, at common law, no executor or administrator of a person domiciled and dying in one of the States could, in virtue of letters obtained there, recover a simple contract debt due to the deceased from a resident of the District of Columbia. That could only be effected by taking out letters anew here.

This was changed by an act of June 24, 1812, which provided that such executors or administrators might maintain any suit or action and prosecute and recover any claim in the District of Columbia in the same manner as if their letters had been granted by the

proper authority in said District. But this act was repealed by being omitted from the revision of 1874, and the law stands the same as it was before the act passed.

If an administrator appointed in a State should come within this District, and, without taking out new letters here, should, in fact, collect a debt due here which the debtor voluntarily pays him, "it would seem on general principles," says Judge Story (Conflict of Laws, p. 424), "he would be liable as an executor *de son tort*, or person intermeddling with such assets without rightful authority derived from the local authorities under a new grant of administration here, and might be sued by creditors here."

And suppose, further, that after such payment, administration should be granted to another person here, would it be any bar to *his* action against the debtor that the latter had already paid the debt to *another administrator*, who had no right to demand it, in virtue of his original administration? And suppose a contest to arise between the original and local administrators in relation to the administration of the debt so received as assets of the deceased, could the *original* retain it against the will of the *local* administrator? Judge Story puts both these questions, and evidently thinks that they should both be answered in the negative.

The Supreme Court, however, have since held in Wilkins *vs.* Ellett (9 Wall., 741), that a voluntary payment by a debtor to a domiciliary administrator of another jurisdiction is good. And this was reaffirmed in the same case again before the court at the last term.

Subject to the contingency of a claim by a local administrator, undoubtedly, a receipt to a debtor anywhere by the administrator of the domicile would be a discharge, because the domicile is the ultimate destination of all personal assets, wherever situated.

The question next presents itself, in what light, as assets, is a debt from the United States to a creditor domiciled and dying in a State to be regarded? I speak now of a general, simple contract indebtedness not merged in or paid by any special obligation though it may have been appropriated for. Is it assets at the domicile of the deceased creditor, or is the District of Columbia to be considered the *habitat* of the debtor, so as to make it local assets there?

This question came before the Supreme Court in the case of Vaughan *et al. vs.* Northup *et al.* (15 Pet., 1).

James Moody resided in Kentucky and died there; Northup took out administration on his personal effects in that State, and, in vir-

tue of his letters, received from the Treasurer of the United States a large sum of money. The complainants, claiming to be next of kin of James Moody, filed a bill in the District of Columbia against Northup, who happened to be found here, for an account and distribution of the personal estate.

Now, if this debt of the Government stood on the same footing as the debt of a private individual living here, then, on the grounds already referred to, Northup might have been held liable to account for it here as *executor de son tort*. It is true that the act of 1812, then in force, converted all debts due in this District to a non-resident decedent into *general*, as distinct from *local* assets, but, as to *Government debts*, the courts held, independently of the statute, that *such* was *their intrinsic character*, in the following language: "But it has been suggested that the present case is distinguishable because the assets sought to be distributed were not collected in Kentucky, but were received as a debt due from the Government at the Treasury Department at Washington, and *so constituted local assets within this District*. We cannot yield our assent to the correctness of this argument. *The debts due from the Government of the United States have no locality at the seat of Government*. The United States, in their sovereign capacity, have no *particular* place of domicile, but possess, in contemplation of law, an ubiquity throughout the Union; and the debts due by them are not to be treated like the debts of a private debtor, which constitute local assets in his own domicile. On the contrary, the administrator of a creditor of the Government, duly appointed in the State where he was domiciled at his death, has full authority to receive payment and give a full discharge of the debt due to his intestate in any place where the Government may choose to pay it, whether at the seat of Government or at any other place where the public funds are deposited. If any other doctrine were to be recognized the consequence would be that before the personal representative of any deceased creditor, belonging to any State in the Union, would be entitled to receive payment of any debt due by the Government, he would be compellable to take out letters of administration in this District for the due administration of such assets. Such a doctrine has never yet been sanctioned by any practice of the Government, and would be full of public as well as private inconvenience. It has not, in our judgment, any just foundation in the principles of law."

This was decided in 1841. In 1855, in the case of United States use of Mackey *vs.* Coxe (18 How., 100), the case was again referred to, and part of the language above cited was repeated with approbation.

In that case the attorney of administrators of Mackey, appointed in the Cherokee Nation, adjusted a claim of Mackey at the Treasury Department. The Department was unwilling to pay him on his power of attorney, and required him to take out letters of administration here, which he did. He received a large sum of money, and then, as attorney for the administrators of the domicile, receipted to himself as local administrator. On his way home he was accidentally killed and the money lost. The next of kin sued Coxe, one of the sureties on his bond given here. There was no question between the original and local administrators. They were substantially one and the same, *i. e.*, the local administrator was the attorney of the others, and took out letters here for their benefit, in order to get the funds for them. There were no creditors here, and the court held, following the language in Vaughan *vs.* Northup, that the domiciliary administrators could receipt for the money to whoever held it here, and consequently to the local administrator, and in that way discharge his sureties.

I am not aware that the Supreme Court has ever recalled the language employed in Vaughan *vs.* Northup, above cited. And it seems to be fully justified by recognized general principles.

We are accustomed to speak of debts due by the United States as *moneys in the Treasury*. But as far as that might import designated property in a certain place the expression is incorrect; even a Congressional appropriation fails to ear-mark any specific fund, or confer upon a creditor a lien on property in it. It is nothing more than a recognition of the debt, and an authority to pay it out of the general treasure of the Government.

Nor has the Treasury itself any locality bounded by territorial limits.

The act of August 6, 1846, chapter 90, embodied in General Revised Statutes, section 359, provided that, "the rooms provided in the Treasury building at the seat of Government for the use of the Treasurer of the United States, &c., and the fire-proof vaults and safes erected therein for the keeping of the public moneys in the possession and under the immediate control of the Treasurer, *and such other apartments as are provided as places of deposit of the public money, shall be the Treasury of the United States.*"

It proceeds then to direct that the mints at Carson City and Denver, and the pay office at Boise City, shall be places of deposit for such public moneys as the Secretary of the Treasury may direct; that there shall be assistant treasurers at ten different cities, including Boston, New York, New Orleans, and San Francisco; that the rooms assigned to them *shall be appropriated for the safe-keeping of the public moneys deposited with them, respectively;* and it makes all public moneys paid into any depository subject to the draft of the Treasurer of the United States, drawn agreeably to appropriations made by law.

It is true that in Cooke *vs.* United States (91 U. S., 389) the expression is used that "the rooms provided in the Treasury building at the seat of Government for the use of the Treasurer, are by law the Treasury of the United States." But that had no reference to any such question as the present. The only question in the case was, whether certain Treasury notes purchased by the assistant treasurer at New York were thereby so finally paid and retired that the Secretary of the Treasury could not return them as spurious. And the court argued that the power to retire them was conferred on the Secretary; that his Department is at Washington, in which all claims must be adjusted; that the retirement of these notes involved the adjustment of a claim, and that cannot be considered as done until the notes are forwarded to Washington and examined, and finally received or rejected. The expression above mentioned was incidentally used in this argument, but had no reference to any such question as the *situs* of a debt of the United States for the purposes of administration.

Territorially, then, the Treasury is coextensive with the Union, and the Treasurer, who is authorized, by warrant of the Secretary of the Treasury, to pay a debt appropriated for by act of Congress, may pay it out of funds in New York or San Francisco as well as out of those in his vaults in Washington. It is impossible to say, then, that an appropriation of money gives to the creditor of the United States a right of property in any particular deposit of coin in the city of Washington and within the territorial jurisdiction of this court. It does not advance the creditor a step beyond where he was before as to any rights of property, but leaves the debt of the Government still a mere general obligation to pay a liquidated sum, which, as the Supreme Court say, is not an obligation to pay at the city of Washington, more than at any other place, and is not

therefore property having its *situs* at Washington. And, consequently, a domiciliary executor or administrator of a deceased creditor of the Government is not under the necessity of administering here on a claim against the Government, nor has a *local* administrator, appointed here, the exclusive right to demand it of the Government, as property situated necessarily and exclusively here, and which he only could sue for if the Government were sueable in our court.

If the converse of this were true certain other serious consequences must follow. If a debt due from the United States constituted local assets here of a deceased creditor, it must be equally true that during the life-time of the creditor it is property within the jurisdiction and subject to the process of the court, as completely as a stock of merchandise would be, in the hands of the Treasurer, as bailee of the owner. It would be subject to be attached as the property of non-residents, or by way of execution. It would be a *res* with respect to which non-residents could be brought into court by publication, and which could be acted upon directly by decree of the court. The custodian of the fund would be as much subject to the direct orders and decrees of the court as any private bailee. But this court, I think, has uniformly declined to exercise such a jurisdiction.

In 1825 one Vasse filed his bill in the circuit court of this District to enjoin certain parties from receiving, and *the Treasurer of the United States from paying to them*, the amount of an award made by a board of commissioners appointed under a treaty with Spain. The real defendants were non-residents, and publication was made against them. The court said, "The first question is, has this court jurisdiction as to any of the defendants against whom it can make a final decree? The fund out of which the claims are to be paid is in the Treasury of the United States; where is that? The Treasurer resides at Washington, and the head of the Department, but is the money there? Can the fund be said to be within the jurisdiction of the court? We think not. The officers of the United States holding the public money, as money of the United States, are not accountable to anybody but the United States, and are not liable at the suit of an individual, on account of having such money in their hands. The defendants, Comegys, Pettit and Mifflin, against whom only an effectual decree can be made, are not within the jurisdiction of the court. * * * We think, therefore, that the bill ought to be dismissed."

With some departures from this rule, expressly authorized by statute, and others which I think were inadvertent, I think this opinion has always prevailed in both the old circuit court and this court. Certainly I think I can say that within my recollection it has been the tradition of both courts that the court would not assume to decree directly against the Secretary of the Treasurer the disposition of money in the Treasury (so-called), but would simply decree against the parties in interest properly before the court, and that the Treasury Department, while it would not admit the authority of the court directly to dispose of funds under its control, would, nevertheless, so far respect any decision of the court and any decree made by it, *as between and against the parties interested*, as to apply the money in conformity with such decree.

In 1836, in the case of Ridgway *vs.* Hayes, while the circuit court refused, on the merits, to enjoin the Secretary from a certain disposition of a Spanish award, Judge Cranch did indeed say that the fund in question was placed in the Treasury as a place of deposit only, and the United States were merely *trustees*, and he could not see why the United States, in cases in which they were merely *stakeholders*, should not submit to the decisions of the courts; but in that case it was unnecessary to decide as to the authority of the court to enjoin the payment of money out of the Treasury. This was, of course, mere *obiter*, and applicable to a different class of cases from the present.

In 1837 a bill was filed by Dutill's administrator *vs.* Coursault, claiming a portion of a French award, and praying injunctions against its payment to other parties against the Secretary and the Treasurer. These appeared and answered, and raised the question of jurisdiction, but under protest as to this, professed themselves willing, nevertheless, to pay the parties who shall appear entitled. The opinion of the court does not touch that question, but decides the merits only, and directs a decree to be prepared accordingly. The decree did, in form, direct the Secretary and Treasurer to pay, and this is the only case in which that occurred.

In 1840 one Metz, claiming as assignee in insolvency for Milnor, filed a bill in the circuit court of this District to enjoin Milnor from receiving and the Secretary of the Treasury from paying to him the amount of a claim against the United States for which Congress had made an appropriation. The preliminary injunction issued, *sub silentio*, as prayed, and in the final decree the injunction

was made perpetual, but the court decreed that Metz be *entitled to receive* from the Secretary of the Treasury the sum of money in the said bill sought to be recovered," and seemed to have carefully abstained from decreeing *that the Secretary pay the money*. The case went to the Supreme Court, and the statement of the case in the opinion of that court (16 Pet., 225) is that "Metz filed his bill (in the court below) enjoining Milnor from receiving the money, and had a perpetual injunction," no notice being taken of the injunction against the Secretary. This is the single instance in the history of the court, I think, of a *final injunction* against the Secretary, except where it was authorized by *statute*, and evidently no question was made on the subject, because he had no interest in raising it. But the decree went no further as against him than an injunction, and declined to give active relief.

An act of Congress of 1849, chapter 108, passed to carry into effect the treaty with Mexico as far as it related to the claims of American citizens against Mexico, enacted that where parties claimed title to the awards made by the Mexican Commission they might give notice to the Secretary of the Treasury and file their bills in the circuit court of this District for injunctions and relief, and "*any injunction thereupon granted by the court shall be respected by the Treasury Department.*" The same provision was extended to awards on claims against Brazil by act of July 3, 1852. (10 Stat., 11.)

Quite a number of suits were instituted under authority of these acts, and among them were the cases of Dey *vs.* Whitney and Clark *vs.* Clark, cited by my brother Hagner in his opinion. But, of course, these are not precedents, and furnish no authority for the assertion of a general authority over money in the control of the Treasury Department, not subjected by express statute to the jurisdiction of this court.

These cases ran along for a number of years, and probably while some of them were pending Lockett *et al.* filed a bill in the circuit court to restrain one Pemberton from receiving and Secretary Marcy from paying to him the one-half of a certain award against Great Britain which they claimed as counsel fees.

Although this kind of case had not been provided for by statutes like those above mentioned, the court and counsel both probably failed to distinguish between them; and here again, *sub silentio, a preliminary* injunction went against the Secretary as well as Pem-

berton. But no process was served upon the Secretary, and the final decree was not against him at all. It was simply that *Pemberton pay to the complainant* the money claimed. *Pemberton appealed* from this decree, and it was reversed on the merits; but, of course, no question could come before the Supreme Court in reference to the Secretary of the Treasury. (See Pemberton *vs.* Lockett *et al.*, 21 How., 257.)

Thus it will be seen that there is no instance of a final decree being made against the Secretary of the Treasury respecting the disposition of a fund under his control, except in the case of Dutihl *vs.* Coursault, in which the Secretary, while reserving the question of jurisdiction, yet virtually submitted to such decision as the court might make; and in the cases above referred to not arising under the Mexican and Brazilian award, the decrees were against only the parties in interest who were present in the court defending, thus giving the court jurisdiction over these persons.

In the late case of McManus *vs.* Standish, decided in 1881, reported in 1 Mackey, Judge Wylie, in reviewing this whole subject, declined to go further than to say that the practice of the court has been in favor of the jurisdiction of this court *where it had the parties before it* to decree as to them. It was a case of claim by counsel to a part of a Mexican award made under a later treaty than the former one, that of 1868. The Secretary of State, who had control of the funds, was made a formal party, but did not appear, nor did the court proceed to make any decree against him, although this was not a case of indebtedness of the United States, but the Secretary was a mere stakeholder. All parties in interest were present in court, and the decree was made between them.

In a still later case, not reported, relating to one of these same Mexican awards, although it was not money of the United States, where the parties were non-residents, the court expressly declined to take jurisdiction, which they might have done if the theory were correct that such moneys were property within the local jurisdiction of the court. We must hold, then, that a mere Government indebtedness has no local *situs* here, simply because this is the seat of Government. What is the consequence?

The Supreme Court say (in Wilkins *vs.* Ellett, *supra*), that "the original administrator therefore, with letters taken out at the place of the domicile, is invested with the title to all the personal property of the deceased, for the purpose of collecting the effects

of the estate, paying the debts, and making distribution of the residue, &c. It is true, if any portion of the estate is situated in another country, he cannot recover possession by suit without taking out letters of administration from the proper tribunal in that country, as the original letters can confer on him no extra-territorial authority. The difficulty does not lie in any defect of title to the possession, but in a limitation or qualification of the general principles in respect to personal property by the comity of nations, founded upon the policy of the foreign country to protect its home creditors, &c."

Ultimately, it is admitted on all hands that the administrator of the domicile is entitled to all debts due the deceased. The only question is whether they may or must not first be administered in the jurisdiction where the debtors are and the debts are due, and where they are considered local assets. But as the only ground for appointing a local or ancillary administrator is, that there are assets situated exclusively within the local jurisdiction, which could not be sued for and collected by a foreign administrator, but only by a local one, and since that cannot apply to a debt due from the United States, which is not situated exclusively within this District, and which the administrator of the domicile might clearly sue for *anywhere*, if the United States were suable generally, it follows that as between the local and domiciliary administrator, the latter would be entitled to the fund.

I am confronted, however, with a long standing practice apparently in conflict with this view.

There are many instances in which our orphans' court have issued letters of administration, expressly to enable parties to represent claims against the United States or against foreign Governments, before boards of commissioners. It has not only been acquiesced in, but sometimes required by the Treasury Department, as in the Mackey case, *supra*. It has been done, I imagine, where any question arose as to conflicting claims of non-resident administrators, but it has been done as a matter of convenience, where the domicile was unknown, or distant or abroad. Now it is suggested that if the views before stated are correct, it would follow that all these administrations were void for want of jurisdiction in the court.

Although the practice of the orphans' court, with the concurrence of the Treasury officers, could not authoritatively settle the

question of law under discussion, it would still be matter of regret that it should be necessary to declare the practice in question wholly illegal. But this does not seem to be necessary.

And this leads me to consider a qualification of the general principle I have laid down, which I think may be fairly admitted; which is, in substance, that an indebtedness by the United States may or may not be local assets here, at the election of the Government. It is the privilege of the debtor and not of the creditor, or his representatives, to determine the question. The debt is not necessarily or conclusively such assets, so as to give to the local administrator a right to enforce its payment, but if the Government elects to make it such, it becomes assets which our orphans' court can take jurisdiction over and administer.

There is no statutory restriction upon the officers of the Treasury as to the place of payment of the public debts. It is fair to hold that they are at liberty to act upon considerations of public convenience, which are paramount to mere private convenience; while it is true that the United States is not exclusively in the District of Columbia, or its debt due exclusively there, it is also true that it is as much there as in the domicile of the creditor. And what is to prevent the Government from electing to pay its debt in the District only, and from considering the seat of Government as its *habitat* for that purpose. Practically, it will be seen that nothing can prevent this. The administrator of the domicile would not be recognized here. He could not institute a proceeding like the present. He could not obtain a *mandamus* in any State. No State court would have jurisdiction to grant it. And no court of the United States except this, has power to grant a *mandamus*, except when necessary to the exercise of other jurisdiction. If the Treasurer, therefore, chooses to recognize a local administrator in this District as a proper party to receive payment of a Government debt, it seems to be within his power to do so.

In the case of Wilkins *vs.* Ellett, decided at the last term of the Supreme Court, it was held that where a debt due to a deceased person was voluntarily paid by the debtor at his own domicile in a State in which no administration had been taken out and in which no creditors or next of kin resided, to an administrator appointed in another State, and the sum paid was inventoried and accounted for by him in that State, the payment was good as against an administrator afterwards appointed in the State in which the pay

was made, although this was then found to be the domicile of the deceased.

There is no danger, in the light of this ruling, that the United States could ever be called on again for money voluntarily paid to a local administrator here and fully administered, where at the time there was no foreign administrator to claim, as in the cases before referred to. The payment would be considered a discharge, and if so, the local administrator must be held to have rightfully received it and the money to be assets in his hands. It does not therefore seem to me that the general views I have expressed threaten the integrity of the administration heretofore granted by the orphans' court, and the qualification of the general doctrine is to be noted.

I have spoken, so far, of a mere general indebtedness, the payment of which has been authorized by an appropriation, at the time of the creditor's death. This, we have seen, has no local *situs*. But it is very easy for such a *situs* to be given it by arrangement with the creditor in his life-time. If, for example, the treasurer of the United States, when authorized by the Secretary's warrant to pay the debt, should give his draft upon an assistant treasurer in New York and the latter should accept it, it is evident that a change would take place in the character of the debt. In place of an open account, commercial paper—a bill of exchange—has been substituted. Assuming it to be the bill of the Government, it is governed by the same rules as that of an individual. (U. S. *vs.* Bank of Met., 15 Pet.) The bill has become payable at a place certain, and the debtor is there. That is the place of the contract and the bill would be assets there. And the same would seem to be the rule when the Treasurer gives a draft on himself. It may be said that this is a bill of exchange, accepted as soon as drawn, to be paid at his counter here, just as a bill drawn by a partner on his firm is accepted in the very act of drawing it. More properly, perhaps, it is the promissory note of the Treasurer payable here. (Byles on Bills, p. 66.)

The original indebtedness at large of the United States, to the Pulliams, has now been paid off—conditionally—by the drafts described in the proceedings. These are a written contract of the Treasurer, whose official residence is at the seat of Government, to pay so much money *at this place*, and this has been accepted in place of a general indebtedness payable anywhere. The United States

is under no obligation to pay these drafts anywhere else than here; no officer of the United States is authorized to do so and the creditor has no right to demand their payment elsewhere. In virtue of this transaction, the cause of action is here only, and the debtor is here. It is difficult to conceive how a debt can be more effectually localized.

The drafts have an intrinsic value as muniments of title to the money they represent. Without them the money cannot be drawn. The foreign or domiciliary administrator could not recover them from the attorney in whose possession they were. Only a local administrator could do that. Virtually, the attorney has done the only thing which he could be forced to do, viz, he has delivered them to the local administrator who, in this case, happens to be himself. This administrator is the only person who can present them for payment. As the Supreme Court say, in Wilkins *vs.* Ellett, *supra*, "The administrator by virtue of his appointment and authority as such, obtains the title in promissory notes or other written evidences of debt, held by the intestate at the time of his death and coming to the possession of his administrator, and may sell, transfer, and indorse the same," &c. We do not see why his indorsement and delivery of them to the Treasurer would not be a perfect protection to him.

The case then stands as if an administrator appointed here were suing a resident debtor on his promissory note payable here, and the latter were making the defense that there is an administrator at the domicile of the deceased, which would obviously be no bar to the action.

The official character of the respondent, however, makes it necessary to resort to the writ of *mandamus*. There are no controverted questions of fact calling for the exercise of judgment and discretion on the part of the Treasurer, but the single issue of law whether the petitioner is the person legally entitled to the money which it is the plain ministerial duty of the Treasurer to pay.

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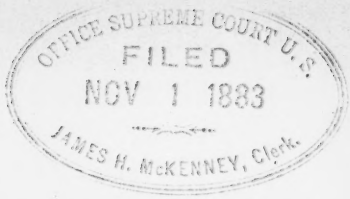

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1883.

A. U. WYMAN, *Treasurer of the United States,*
vs.
THE UNITED STATES, *on the relation of*
EMINEL P. HALSTEAD, *Administrator, Etc.*
No. 892.

BRIEF FOR DEFENDANT IN ERROR.

A. L. MERRIMAN,
J WALTER COOKSEY,
Attorneys for Defendant in Error.

MILANS, PR.

—IN THE—

SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, A. D., 1883.

No. 892.

A. U. WYMAN, Treasurer of the United States, *Plaintiff in Error*;

vs.

THE UNITED STATES, on the relation of Eminel P. Halstead, Administrator of the Estates of John N. Pulliam and John J. Pulliam, and as Trustee, by order of Court, *Defendant in Error.*

Error to the Supreme Court of the District of Columbia.

BRIEF FOR THE DEFENDANT IN ERROR.

The Plaintiff in Error is Treasurer of the United States.

The Defendant in Error is administrator of the estates of John J. Pulliam and of John N. Pulliam, late of Tennessee; he receiving his appointment from the Supreme Court of the District of Columbia.

On the 1st of May, 1882, Congress passed an act, appropriating moneys to several claimants, in which were the sums of $1,323 and $545 to J. J. Pulliam, and of $3,020 to J. J. Pulliam, Executor of J N. Pulliam.

In pursuance of this Act of Congress, the Secretary of the Treasury drew his warrants upon the Treasurer for the said several sums, in favor of the parties named as aforesaid.

Upon receipt of the Secretary's warrants, the Treasurer drew his three drafts, in favor of the parties above named and for the sums specified in the Act of Congress and warrants, which drafts were directed to himself at Washington, D C.

The three drafts were delivered to Halstead, who had authority from the claimant to receive them.

J. J. Pulliam, the principal in two of the drafts and executor named in the other, becoming deceased Halstead still having the drafts in his possession, applied for and obtained letters of administration on the two estates from the proper Court in the District of Columbia.

Letters *de bonis non*, were also issued in Tennessee upon the estate of J. N. Pulliam, but it nowhere appears that he sets up any claim to the possession of the draft issued to his predecessor in administration. As to the estate of J. J. Pulliam, there is no mention of a Tennessee administrator.

B. U. Keyser, Receiver of the German American National Bank of Washington, D. C., claiming an equi-

table lien upon the proceeds, for a certain sum filed his bill in the Supreme of the District making Halstead administrator, and others, parties in which a decree, after evidence taken, passed, fixing the amount due the Bank and directing Halstead as trustee and as administrator, to endorse and collect the money represented in the drafts, which were in Court, to pay the debt due the Bank and to bring the surplus remaining, after final settlement of the estates, here, into Court, to be paid over to the administrator of the domicil.

Halstead, under the authority so conferred, demanded payment on the drafts endorsed by him as directed, which was refused.

Hence the application for a writ of mandamus to the Supreme Court of the District of Columbia.

Answer is made—

1st. That neither the United States, nor the plaintiff as its Treasurer, was a party to the decree.

2nd. That the letters of administration granted by the Court of the District of Columbia, were void for the reason, that the domicil of the decedents, was in Tennessee, having no assets in the District of Columbia.

3rd. That said drafts had their situs in Tennessee.

4th. That the legal title thereto was in the Tennessee administrators.

5th. That the latter were not bound by the decree.

6th. That Keyser's claim was illegal and void.

I. It is admitted that the defendant below was not party to the Equity suit, nor was it essential that he

should be. He is stake-holder simply, and as he says in his answer, all the interest he has in the matter is to be certain that he pays the moneys to parties legally authorized to receive them.

II. We do not suppose it will be seriously contended that the letters to Halstead were void, for there is nothing in the record, rebutting the presumption of their validity, or that any fact necessary for the jurisdiction of the Court, in the premises, did not exist.

The Court granting the letters was a Court of general jurisdiction, and its orders, when so made, can be attacked in a direct proceeding *only*, and not collaterally.

RABORG VS. HAMMOND, 2 Har & Gill 92.

ANDERSON VS. AVERY, 14, Grattan 227.

SEGEE VS THOMAS, 3, Blatch 21.

HARRINGTON VS. BROWN, 5, Pickering 519.

The same may be said as to the decree, so far as relates to Halstead and the subject matter—the drafts then in Court.

It is not pretended that the Tennessee administrator can be bound personally by these decrees, for they were not in Court and could not be in a Court outside of their own State, but inasmuch as the surplus was to go to them, it was proper that they should have notice of any proceeding, in another jurisdiction, affecting their estates.

III. The real issue in this case, rests upon the question raised in the answer, that the drafts had no situs in the District of Columbia, but that the legal title to

them was in the administrators appointed or to be appointed at the place of the domicil of the decedents, and that the legal title to the drafts was vested in the latter.

In order to vest title to the personal estate of an inestate in an administrator, he must have possession and his grant to take charge of "all the goods, chattels, personal estate and credits" applies to the jurisdiction in which he receives his appointment, only.

Story on Conflict of Laws, Sec. 521.

ORCUTT VS. ORMS 3, Paige 459.

Wherein it is said that as to personal property, when there are administrators of the same intestate, in separate States, the administrator who gets possession of the property *is entitled to it.*.

It follows that, if possession of the draft is necessary to a demand of payment, or if the debtor is ubiquitous in character, as is claimed for the United States, then the title to the drafts must be in the administrator who has them in possession.

This Court, in the case of Wilkins vs. Ellett, decided at last term, says, "The administrator, by virtue of his appointment and authority as such, obtains the title to promissory notes, or other evidences of debt held by the inestate at the time of his death, and *coming to the possession of his administrator*, and may sell, transfer and endorse the same."

The *situs* of simple contract debts including promissory notes and bills of exchange is where the debtor is.

Story on Conflict of Laws, Sec. 521–523.

Chancellor Kent says: (2 Kent's Com. 431), "administration must be granted where the debts are, for an ad-

ministrator has no power beyond the jurisdiction in which he received his letters of administration, and the home creditors must be first paid before the admistrator could send the surplus fund to the country of the proper domicil of the intestate."

If therefore the facts are that these drafts are in the possession of Halstead as administrator, appointe l in the District of Columbia, and that the debtor is in the District of Columbia and the drafts payable there, then it follows from the authorities quoted, that the legal title in the drafts vests in him, and he may "sell, transfer and endorse the same." At least he may endorse and collect them, and his administration being in the nature of an ancillary one, after paying the claims against the estate, may pay over the surplus to the administrator of the domicil, as directed by the Court in its decree.

But it is urged that the *habitat* of the United States is co-extensive with its territory, and that consequently when the domicil of the intestate was within the United States, the debtor was also there and that the *situs* was also at the place of the domicil, which as to these parties was in Tennessee.

Possibly this might be true in the case of simple demands against the United States, where there was no documentary evidence of such debt, for Congress, the Departments and the Court of Claims, are open to suitors from all portions of the United States alike.

But these drafts stand upon a different footing.

The warrants having been drawn by the Secretary of the Treasury, properly countersigned and delivered to the Treasurer, have the effect of withdrawing from the public treasury, the moneys designated therein and places such moneys in the hands of the Treasurer, to

meet the drafts he may issue therefor. The Treasurer then becomes custodian for the holders of the drafts and the money is to be held by him, for the benefit of such holders, until presented for payment, with this proviso in the Statute, that should such drafts remain unpaid for three years or more, the moneys so represented should be deposited by the Treasurer, to be covered back into the Treasury by warrant. Sec. 305 Rev. Stat.

The drafts authorized to be issued by the Treasurer, upon receipt of the warrants, may be directed to himself as Treasurer, and are thus payable at Washington, D. C., or they may be directed to any Assistant Treasurer or depository of public funds. as may be most convenient, and if directed to such Assistant Treasurer or other depository then of course the draft is payable at such place.

Rev. Stat. 3644.

The money represented by the drafts has been segregated from the public moneys, and withdrawn from the Treasury by the warrants.

It is said that a bank check is an appropriation of a specific sum from the drawer to the payee, so that when presented the payee becomes absolute owner of the money represented by the check.

In Re Brown, 2 Story 502.
STEWART VS. SMITH, 17 Ohio St. 86.

Under the Statutes quoted this general principle of law applies with greater force.

These drafts are muniments of title and without their presentation by a party competent to endorse them, the Treasurer has no authority to pay them. Provision otherwise is only made in case of loss or destruction of

treasury drafts or when stolen, and then only under certain prescribed regulations.

Sections 300 and 3646 Rev. Stat.

There are therefore several elements lacking to vest title to these drafts in the Tennessee administrators.

1st. They are not in their possession either actually or constructively. They being in the District of Columbia, are neither within their jurisdiction or reach. They have no authority to act within the District, in their representative capacities for any purpose whatever, nor can they invoke the aid of the Court of the District, in their behalf, either to obtain possession of the drafts or for their collection. Their appointments and authority being local, they cannot go beyond the limits of their own jurisdiction, except with permission from the foreign state, and no such permission is accorded, in the District of Columbia. It is true that for a period of time from the date of the act of Congress of June 24, 1812, to the repeal thereof in the revision of the Statutes in 1873, such permission was granted to outside administrators, but not now or since such repeal. And it was upon the basis of the act of 1812, and while it was in force that the decisions of this Court in the cases of Vaughn vs. Northrup, 15 Peters 1, Kane vs. Paul, 14 Peters 35 and Mackey vs. Coxe, 18 How 100 were predicated.

2nd. The drafts were specifically made payable at Washington, D. C., and likewise beyond the limits of the jurisdiction of an administrator in Tennessee, so that even if the Tennessee administrator had the drafts in possession, he could not appear as such, at the place of payment, for the purpose of demanding payment, much less to enforce payment through the aid of the judiciary.

3d. Possession is required, for as before stated, presentation and endorsement by a person competent to do so, is required for their payment. Wherefore being such muniments of title as are indispensible for their collection, such possession is necessary; as much so as of any article of personal property.

If the theory of the Plaintiff in Error is correct he would be beyond the power of any Court, on behalf of any administrator receiving his appointment from any state jurisdiction, holding his drafts payable at Washington, for reason of inability to appear in the proper Court to invoke this remedial writ.

No such construction as will deprive a class of citizen, residing in any part of the United States, except the District of Columbia of their legal remedy, will be sanctioned by the Courts.

In conclusion we desire to direct attention to the comprehensive opinions of Justices Hagner and Cox, in the court below, reported in full Vol. X1, Washington Law Reporter, 370–386 *et seq.*

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